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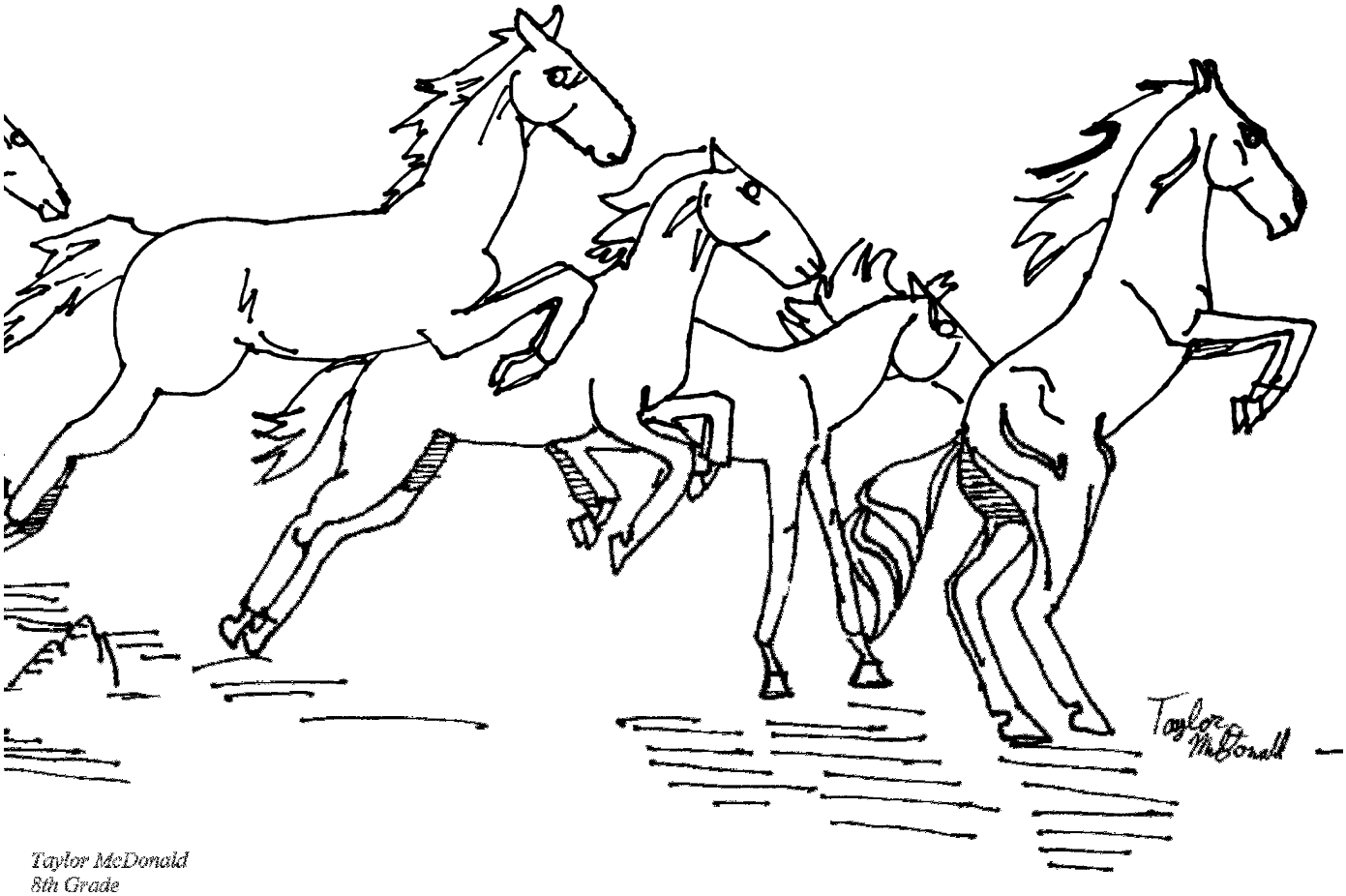

Taylor McDonald
8th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0647-GA

Requestor:

The Honorable Joe Driver

Chair, Committee on Law Enforcement

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a type A general law city to permit employee payroll deduction as part of a collective bargaining agreement (RQ-0647-GA)

Briefs requested by December 31, 2007

RQ-0648-GA

Requestor:

Ms. Peggy D. Rudd, Librarian and Director

Texas State Library and Archives Commission

Post Office Box 12927

Austin, Texas 78711-2927

Re: Authority of a library district to assess and collect ad valorem taxes (RQ-0648-GA)

Briefs requested by January 7, 2008

RQ-0649-GA

Requestor:

The Honorable Rick Perry

Governor of Texas

Governor's Office

Post Office Box 12428

Austin, Texas 78711

Re: Constitutionality of section 41(e)(3) of the Probate Code, which permits a probate court to declare that the parent of a child under the age of 18 years may not inherit from the child if the parent has been convicted of one of several crimes against a child who is not the child of that parent (RQ-0649-GA)

Briefs requested by January 7, 2008

RQ-0650-GA

Requestor:

The Honorable A. J. (Jack) Hartel

Liberty County Attorney

Office of the County Attorney

Post Office Box 9127

Liberty, Texas 77575-9127

Re: Whether an appraisal district's board of directors may contract with a company that employs the son of the chief appraiser (RQ-0650-GA)

Briefs requested by January 17, 2008

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200706113
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 5, 2007

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER U. ASIAN CITRUS PSYLLID QUARANTINE

4 TAC §§19.410 - 19.413

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.410 - 19.413, concerning a quarantine for the Asian citrus psyllid, *Diaphornia citri* Kuwayama. The Texas Government Code §2001.034, authorizes the department to adopt an emergency rule without prior notice or hearing if a federal law requires the department to adopt a rule on fewer than 30 days notice. The Animal and Plant Health Inspection Service (APHIS) agency of the United States Department of Agriculture (USDA) issued a Federal Order on November 2, 2007, titled, "Expansion of the quarantines for citrus greening and Asian citrus psyllids," which quarantines 32 Texas counties for this psyllid insect pest. The Federal Order requires the department to establish a parallel quarantine by December 1, 2007; otherwise APHIS will quarantine the entire state of Texas to prevent the spread of the psylllid to other states. APHIS issued this order under the regulatory authority provided by §412(a) of the Plant Protection Act of June 20, 2000, as amended, 7 United States Code 7712(a).

The Asian citrus psyllid is a relatively new pest in Texas. A statewide survey conducted by the Texas A&M University scientists in 2006 - 2007 showed presence of this psyllid in 32 Texas counties. The psyllid causes damage to citrus crops primarily by transmitting the pathogen, which causes one of the most damaging diseases of citrus called citrus greening. This disease is not known to occur in Texas; however, it occurs in the state of Florida. To avoid APHIS's statewide quarantine, the department believes adoption of a quarantine for 32 counties on an emergency basis, is both necessary and appropriate. The emergency quarantine takes necessary steps to prevent the artificial spread of the psyllid both in the non-infested counties of Texas and into those states into which the Federal Order allows the psyllid host material to enter. Preventing artificial spread of the psyllid into non-infested counties of Texas would delay spread of citrus greening when and if the disease is found in Texas. Furthermore, preventing artificial spread of the psyllid becomes especially important since the disease can remain latent for several years and could be spread without detection.

New §19.410 defines the quarantined pest. New §19.411 designates the infested areas subjected to the quarantine. New §19.412 lists the articles subject to the quarantine. New §19.413 prescribes requirements for movement of the quarantined articles from the quarantined area to a free (non-infested) area. An emergency rule adopted under §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days. Nevertheless, the department intends to propose adoption of this emergency rule on a permanent basis in a separate submission.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.001 and §71.002, which authorize the department to establish quarantines against in-state and out-of-state diseases, §71.004, which authorizes the department to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles; and the Texas Government Code §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.410. Quarantined Pest.

The quarantined pest is the Asian citrus psyllid, *Diaphornia citri* Kuwayama, in any living stage of development.

§19.411. Quarantined Areas.

The quarantined areas are:

(1) the states of Florida and Hawaii, the entire territory of Guam and the Commonwealth of Puerto Rico;

(2) the Texas counties of Aransas, Atascosa, Bee, Bexar, Brazoria, Brooks, Caldwell, Cameron, Dimmit, Duval, Harris, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, Matagorda, Maverick, McMullen, Nueces, Refugio, San Patricio, Starr, Uvalde, Val Verde, Victoria, Waller, Washington, Webb, Willacy, and Zapata; and

(3) any other area infested with the Asian citrus psyllid.

§19.412. Quarantined Articles.

All plants, budwood, cuttings, or other fresh or live plant parts except seed and fruit of species that are hosts of Asian citrus psyllid: *Aegle marmelos, Aeglopsis chevalieri, Afraegle gabonensis, Afraegle paniculata, Atalantia* spp., *Balsamocitrus dawei, Bergera (=Murraya) koenigii, Calodendrum capense, X Citrofortunella microcarpa, X Citroncirus webberi, Citropsis schweinfurthii, Citrus* spp., *Clausena anisum-olens, Clausena excavata, Clausena indica, Clausena lansium, Eremocitrus glauca, Eremocitrus hybrid, Fortunella* spp., *Limonia acidissima, Merrillia caloxylon, Microcitrus australasica, Microcitrus australis, Microcitrus papuana, X Microcitronella Sydney', Murraya* spp., *Naringi crenulata, Pamburus missionis, Poncirus trifoliata, Severinia buxifolia, Swinglea glutinosa, Toddalia asiatica, Toddalia lanceolata, Triphasia trifolia, Vepris lanceolata, and Xanthoxylum fagara.*

§19.413. Restrictions.

(a) General. While fresh fruit is not a quarantined article, fruit moved from areas quarantined for the Asian citrus psyllid to citrus producing areas where the Asian citrus psyllid is not present (Alabama, American Samoa, Arizona, California, Louisiana, Northern Mariana Islands, Puerto Rico, Virgin Islands, and those areas of Texas not quarantined for the psyllid) must have been cleaned using normal packinghouse procedures. Quarantined articles originating from quarantined areas are prohibited entry into or through free areas of Texas, except as provided in subsection (b) of this section.

(b) Exceptions. To be eligible to move from quarantined areas, quarantined articles must meet the following requirements.

(1) Requirements to move from quarantined areas of Texas to free areas of Texas.

(A) Quarantined articles must be treated using products approved by the United States Environmental Protection Agency (EPA) and the department for use in nurseries. Persons applying treatments must follow the product label, its applicable directions, and restrictions and precautions, including statements pertaining to Worker Protection Standards;

(B) All quarantined articles must be treated with a drench containing imidacloprid as the active ingredient within 30 days prior to shipping and also be treated with a foliar spray with a product containing either acetamiprid, chlorpyrifos, or fenpropathrin as the active ingredient within 10 days prior to movement. The drench and foliar spray must be applied at the rate designated for the Asian citrus psyllid on the product;

(C) In the case of fresh curry leaf *(Bergera (=Murraya) koenigii)* leaves intended for consumption, instead of the treatments specified in subparagraph (B) of this paragraph, the leaves must be treated prior to the movement in accordance with the Animal and Plant Health Inspection Service's (APHIS) treatment schedule T101-n-2 (methyl bromide fumigation treatment for external feeding insects on fresh herbs) at the times and rates specified in the treatment manual and safeguarded until export. This information can be found on page 5-2-28 of the treatment manual, located on line at: http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment_pdf/05_02_t100schedules.pdf; and

(D) Any person engaged in the business of growing or handling quarantined articles must enter into a compliance agreement with the department if the quarantined articles are to be moved to free areas of Texas.

(2) Requirements to move from quarantined areas of Texas to other states.

(A) The quarantined articles may not be moved to Alabama, American Samoa, Arizona, California, Louisiana, Northern Mariana Islands, and the Virgin Islands of the United States.

(B) Businesses must enter into a compliance agreement with APHIS to move quarantined articles to states and territories other than those listed in subparagraph (A) of this paragraph.

(C) Compliance agreements may be arranged by contacting a local office of the Plant Protection and Quarantine (PPQ), APHIS in Texas or the Texas State Plant Health Director, PPQ-APHIS at 903 San Jacinto Blvd., Suite 270, Austin, Texas 78701.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 29, 2007.

TRD-200705947
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective Date: November 29, 2007
Expiration Date: March 27, 2008
For further information, please call: (512) 463-4075

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. **[~~Square brackets and strikethrough~~]** indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER A. GENERAL GUIDELINES

1 TAC §55.4, §55.5

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §55.4 and §55.5, concerning the determination of cooperation for persons receiving public assistance who are referred to the Office of the Attorney General for child support services, and good cause for failure to cooperate. The proposed amendments clarify procedures used by the Title IV-D agency in the determination of cooperation. The proposed amendments also reflect the name change of the Department of Human Services to the current name of the Health and Human Services Commission.

Alicia G. Key, Deputy Attorney General for the Child Support, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years these sections as proposed are in effect, the public benefit as a result of the amended sections is the clarification of the procedures used by the Title IV-D agency in the determination of cooperation.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §231.002, which provides the Office of the Attorney General with the authority to adopt rules for the provision of child support services.

The amendments affect Human Resources Code, Title 2, Chapter 34, State Temporary Assistance and Support Services Program.

§55.4. Determination of Cooperation.

The Title IV-D Agency shall make the determination as to whether an individual is cooperating as required by §55.3 of this subchapter relating to Cooperation Required for Recipients of Child Support Services.

(1) If a TANF recipient or a Medical Assistance-Only recipient (where both parent and child receive benefits) [~~of public assistance (TANF or Medical Assistance-Only)~~] fails to cooperate:

(A) The Title IV-D Agency must report the determination of non-cooperation to the Health and Human Services Commission [~~Department of Human Services~~].

(B) The Health and Human Services Commission will [~~Department of Human Services must immediately~~] notify the recipient and impose penalties pursuant to Human Resources Code, §31.0032, by:

(i) terminating the total amount of cash assistance for the family [~~by reducing the recipient's next grant award~~] if a TANF recipient, or

(ii) terminating only the recipient's medical benefits if a Medical Assistance-Only recipient.

(C) To avoid interruption of benefits, the [~~The~~] recipient may request a hearing to show good cause for not cooperating not later than the 13th day after receipt of the notice of non-cooperation issued by the Health and Human Services Commission [~~Department of Human Services~~], in which case, the procedures in §55.5 of this subchapter (relating to Good Cause for Failure to Cooperate) apply.

(D) The penalty for failure to cooperate shall remain in effect until the recipient complies with the specific IV-D requirement the recipient failed to satisfy. [~~that caused the penalty.~~] When the Title IV-D Agency determines the recipient is cooperating:

(i) the Title IV-D Agency shall immediately notify the Health and Human Services Commission [~~Department of Human Services~~] the recipient is cooperating and

(ii) on receiving a report of cooperation from the Title IV-D Agency, it is the responsibility of the Health and Human Services Commission to end [~~the Department of Human Services shall lift~~] the penalty.

(2) If a person who is a former recipient of public assistance (TANF or Medical Assistance-Only) fails to cooperate, the Title IV-D Agency shall notify the person that failure to cooperate may result in termination of IV-D services.

~~[(2) If only the child(ren) receives Medical Assistance-Only, the Title IV-D agency shall notify the individual who fails to cooperate that IV-D services may be terminated.]~~

(3) If a person who has never been a recipient of public assistance fails to cooperate, the Title IV-D Agency shall notify the person that failure to cooperate will result in termination of IV-D services.

[(3) If a person who is a former recipient of public assistance (TANF or Medical Assistance-Only) fails to cooperate, the Title IV-D Agency shall notify the person that failure to cooperate may result in termination of IV-D services.]

[(4) If a person who has never been a recipient of public assistance fails to cooperate, the Title IV-D Agency shall notify the person that failure to cooperate will result in termination of IV-D services.]

§55.5. Good Cause for Failure to Cooperate.

When a TANF or Medical Assistance-Only recipient claims good cause for not cooperating with IV-D requirements, the Health and Human Services Commission [Department of Human Services] determines if the recipient has good cause pursuant to Human Resources Code [§]§31.0032 and §31.0033.

(1) If the Title IV-D Agency receives final notification that the Health and Human Services Commission [Department of Human Services] determined good cause exists for failure to cooperate with IV-D requirements, the Title IV-D Agency shall cease all IV-D services and terminate the recipient's child support case.

(2) If the Title IV-D Agency receives notice that the Health and Human Services Commission [Department of Human Services] determined good cause does not exist, the Title IV-D Agency shall continue to provide appropriate IV-D services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 27, 2007.

TRD-200705899
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: January 13, 2008
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER B. LOCATE-ONLY SERVICES

1 TAC §55.31, §55.32

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §55.31 and §55.32, concerning the application to the Title IV-D Agency for locate-only services. The proposed amendments clarify who may apply to the IV-D agency for locate only services and parental kidnapping and child custody services.

Alicia G. Key, Deputy Attorney General for the Child Support, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years these sections as proposed are in effect, the public benefit as a result of the amended sections is a clarification to the applicant for locate-only services and parental kidnapping and child custody services.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §231.002, which provides the Office of the Attorney General with the authority to adopt rules for the provision of child support services.

The amendments affect 42 U.S.C. §653(c).

§55.31. Application.

An "authorized person" as defined by [in] 42 U.S.C. §653(c) [or an attorney or other agent with authority to act on behalf of an "authorized person"] may apply to the Title IV-D agency for locate-only services.

§55.32. Parental Kidnapping and Child Custody Services.

Parental [An applicant must apply pursuant to the Parental Kidnapping Prevention Act of 1989 (the Act), as amended, for locate services for parental] kidnapping and child custody services are available only to [determination through an] authorized persons to make or enforce child custody or visitation determinations as allowed under 42 U.S.C. §663. Authorized persons include [agent and pay the required fee. The State Parent Locator Services accepts applications for these services only from] district judges, county attorneys, district attorneys, or any other official with authority to make or enforce child custody or visitation determinations. [qualified as an authorized person under the Act.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 27, 2007.

TRD-200705900
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: January 13, 2008
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER C. ADMINISTRATIVE REVIEW

1 TAC §§55.101 - 55.105

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §§55.101 - 55.105, concerning administrative review of federal income tax refund intercept, criteria for reporting past-due child support to consumer credit reporting agencies, and contesting reporting to consumer credit reporting agencies. The proposed amendments clarify procedures for administrative review and criteria for reporting past due child support to consumer credit reporting agencies, update statutory references to Texas Civil Statutes, and include revisions to an attached graphic.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years these sections as proposed are in effect, the public benefit as a result of the amended sections is the clarification of the administrative review process and criteria for reporting past-due child support to consumer credit reporting agencies.

Ms. Key has also determined that for the first five years the amended section as proposed is in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 231.

The Texas Family Code, Chapter 231 is affected by the amended sections.

§55.101. Contesting Federal Income Tax Refund Intercept.

(a) A non-custodial parent, who the Office of the Attorney General has determined owes past-due child support and whose federal income tax refund is therefore subject to interception by the Office of the Attorney General, may contest the determined amount of past-due child support or arrears by contacting the Office of the Attorney General and submitting a written complaint to the Office of the Attorney General, Child Support [~~Enforcement~~] Division, at the office address which appears on the notice of an intended or actual administration action, requesting either:

(1) an informal resolution of any issue in [~~seeking to informally resolve any~~] dispute; or

(2) [~~requesting~~] a formal administrative review hearing. A request for an informal resolution of an issue in [~~Seeking to informally resolve any~~] dispute shall not preclude the non-custodial parent from subsequently requesting a formal hearing.

(b) If the order upon which the Office of the Attorney General computed [~~calculated~~] the amount of past-due [~~and owing~~] child support owed was entered by a court of another state, the non-custodial parent may request a hearing in that state.

(c) A [~~The~~] request for administrative review must be submitted no later than 30 days from the date the non-custodial parent receives [~~received~~] notice of an intended or actual report of past-due amounts to the federal Internal Revenue Service [~~and no later than 45 days from the date on the notice of an intended or actual report of past-due amounts to the federal Internal Revenue Service~~].

(d) The [~~A hearing shall be granted by the~~] Office of the Attorney General shall grant a request for hearing on [~~upon the request of~~] the non-custodial parent's submission, not later [~~less~~] than 30 days following the non-custodial parent's receipt of notice of the actual offset, of a completed request for administrative review form to be obtained from the Office of the Attorney General. (The request for administrative review form for contesting federal income tax refund intercepts, appears at the end of this section.)

(e) In an interstate case in which [~~cases where~~] a non-custodial parent has requested a hearing in Texas to contest an arrearage amount calculated by the IV-D agency of another state, the Office of the Attorney General shall grant the requested hearing upon notification of the request by the other state. The Office of the Attorney General [~~non-custodial parent~~] shall then provide the non-custodial parent [~~be furnished~~] with a request for administrative review form to [~~and~~] be returned [~~required to return it~~] to the Office of the Attorney General not [~~no~~] later than 10 days prior to the hearing date.

(f) The parties may appear in person or by telephone, with or without a representative. An in-person hearing must be requested at the time the Request for Hearing is submitted. [~~However, administrative review hearings will be held by telephone conference call, unless the administrative review hearing examiner grants a written request for an in-person hearing. Such request must be received by the hearing examiner no later than 10 days prior to the hearing.~~] The hearing record shall be made by an audio recording [~~of the telephone conference call~~].

(1) The [~~If the~~] non-custodial parent [~~so desires, he or she~~] may submit any contentions and evidence in the form of an affidavit properly acknowledged, thereby making an appearance [~~his or her participation~~] unnecessary. If the non-custodial parent does not participate in the hearing, any properly acknowledged affidavit from the non-custodial parent may be submitted and admitted as evidence into the hearing record and may be considered by the hearing examiner in determining the facts; and

(2) In non-TANF [~~non-AFDC~~] cases, if [~~should~~] the custodial parent chooses [~~choose~~] not to participate, the information and affidavit provided at the time of application shall be considered. If the custodial parent does not participate in the hearing, a [~~any~~] properly acknowledged affidavit from the custodial parent may be submitted and admitted as evidence into the hearing record and may be considered by the hearing examiner in determining the facts.
Figure: 1 TAC §55.101(f)(2)

§55.102. Criteria for Reporting Past-Due Child Support to Consumer Credit Reporting Agencies.

(a) Pursuant to Texas Family Code §231.114, the [~~The~~] Office of the Attorney General shall report the amount of a child support obligation, including the amount of any past-due child support, to consumer credit reporting agencies.

(b) The Office of the Attorney General shall report a past-due amount of child support as "past-due, and zero months delinquent," if:

(1) the court of continuing jurisdiction [~~pursuant to the provisions of the Texas Family Code §11.04 and §11.05,~~] has previously entered an [~~agreed~~] order which adjudicated the amount of past-due child support owed by the non-custodial parent and required periodic payments to reduce that arrearage; and

(2) (No change.)

§55.103. Contesting Reporting to Consumer Credit Reporting Agencies.

(a) A non-custodial parent, who owes a child support obligation and is therefore subject to being reported to consumer credit reporting agencies by the Office of the Attorney General, may contest the amount of child support being reported by the Office of the Attorney General, including the determined amount of any past-due child support or arrears, by contacting the Office of the Attorney General and submitting a written complaint to the Office of the Attorney General, Child Support [~~Enforcement~~] Division, at the office address which appears on the notice of an intended or actual administrative action, requesting either:

(1) an informal resolution of any matter in [~~seeking to informally resolve any~~] dispute; or

(2) [~~requesting~~] a formal administrative review hearing. A request for informal resolution [~~Seeking to informally resolve any dispute~~] shall not preclude the non-custodial parent's [~~parent from~~] subsequently requesting a formal hearing.

(b) A hearing shall be granted by the Office of the Attorney General upon the non-custodial parent's submission of a completed request for administrative review form to be obtained from the Office of the Attorney General. (The request for administrative review form for contesting consumer credit reporting appears at the end of §55.101 of this title (relating to Contesting Federal Income Tax Refund Intercept.))

(c) A [~~The~~] request for administrative review must be submitted not [~~no~~] later than 30 days from the date the non-custodial parent receives [~~received~~] notice of the proposed report of child support amounts to a consumer credit reporting agency and not [~~no~~] later than 45 days from the date shown on the notice of the proposed report of child support amounts to a consumer credit reporting agency.

(d) The parties may appear in person or by telephone, with or without a representative. An in-person hearing must be requested at the time the Request for Hearing is submitted. [~~However, administrative review hearings will be held by telephone conference call, unless the administrative review hearing examiner grants a written request for an in-person hearing. Such request must be received by the hearing examiner no later than 10 days prior to the hearing.~~] The hearing record shall be made by an audio recording [~~of the telephone conference call~~].

(1) The [~~If the~~] non-custodial parent [~~so desires, he or she~~] may submit any contention and evidence in the form of a properly acknowledged [~~an~~] affidavit [~~properly acknowledged~~], thereby making [~~his or her~~] participation in the hearing unnecessary. If the non-custodial parent does not participate in the hearing, any properly acknowledged affidavit from the non-custodial parent may be submitted and admitted as evidence into the hearing record and may be considered by the hearing examiner in determining the facts; and

(2) In non-TANF [~~non-AFDC~~] cases, if [~~should~~] the custodial parent chooses [~~choose~~] not to participate, the information and affidavit provided at the time of application shall be considered. If the custodial parent does not participate in the hearing, a [~~any~~] sworn affidavit from the custodial parent may be submitted and admitted as evidence into the hearing record and may be considered by the hearing examiner in determining the facts.

(e) In an interstate case in which [~~cases where~~] a non-custodial parent requests [~~has requested~~] a hearing in Texas to contest a child support amount calculated by the IV-D agency of another state, the Office of the Attorney General shall grant the requested hearing upon notification of the request by the other state. The Office of the Attorney General [~~non-custodial parent~~] shall then provide the non-custodial parent [~~be furnished~~] with a request for administrative review form to be returned [~~and required to return it~~] to the Office of the Attorney General not [~~no~~] later than 10 days prior to the hearing date.

§55.104. Timely Administrative Appeals.

(a) Written [~~The submission of~~] administrative appeals [~~in writing as~~] required by these rules must [~~shall~~] be submitted either [~~made~~] by hand delivery or by first class [~~United States~~] mail in an envelope or wrapper properly addressed, [~~and~~] with postage prepaid, to the Office of the Attorney General, Child Support [~~Enforcement~~] Division, at the address shown [~~which appears~~] on the notice of intended or actual administrative action or final administrative review decision.

(b) In computing any period of time prescribed or allowed by these rules or any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday as defined by Texas Government Code, §662.003 [~~Texas Civil Statutes, Article 4591~~], in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. When the last day of the period is the next day which is neither a Saturday, Sunday, nor legal holiday, any document filed by mail as provided in subsection (a) of this section is mailed on time when it is postmarked on the last day of the period.

(c) The date of submission of an administrative review request is presumed to be the date that a written request is postmarked by the United States Postal Service or dated by a postal meter. If the postmark and a postal meter date conflict, the appeal was submitted on the postmark date. An appeal received in an envelope bearing no legible postmark or postal meter date will be considered to be submitted three days before receipt by the Child Support Division [~~child support enforcement program~~].

(d) (No change.)

§55.105. Proper Address of Record.

(a) The address for the Office of the Attorney General, Child Support [~~Enforcement~~] Division, shown [~~which appears~~] on the notice of an intended or actual administrative action is the proper address of record for the submission of a request for [~~an~~] administrative review [~~request~~].

(b) The address for the complainant shown [~~which appears~~] on the notice of an intended or actual administrative action is the proper address of record for the complainant until such time as the complainant submits written notification of a change of address to the proper address of record for the Office of the Attorney General, Child Support [~~Enforcement~~] Division. After an administrative review request has been submitted, the complainant's address on that request will be the complainant's address of record.

(c) A copy of the notice of hearing and the final decision shall be mailed by first class [~~United States~~] mail to the complainant and the complainant's legal representative, if any in an administrative review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stacey Napier
Deputy Attorney General
Office of the Attorney General
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SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §§55.111, 55.112, 55.115 - 55.119

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §§55.111, 55.112, and 55.115 - 55.119, regarding forms for child support enforcement. The proposed amendments reflect revisions made to the forms as autho-

rized by state and federal statutes, and conform to the forms currently used by the Office of the Attorney General, Child Support Division. The amendments as proposed also clarify the description of the forms and update statutory cites to the Texas Family Code.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications for state or local government.

Ms. Key has also determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the amended section will be compliance forms authorized by state and federal statutes.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications for small businesses or individuals. In addition, there will be no local employment impact as a result of the amended section as proposed.

Comments on this proposed amendment should be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized by Texas Family Code §158.106.

The proposed amendments affect Texas Family Code Chapters 157 and 158.

§55.111. Notice of Application for Judicial Writ of Withholding.
The following form is to be used in IV-D or non-IV-D cases, if there is a delinquency equal to one month's support or income withholding was not previously ordered.
Figure: 1 TAC §55.111

§55.112. Motion to Stay.
This form is filed by the child support obligor, and prohibits the clerk of the court from delivering the judicial writ of withholding to any employer of the obligor before a hearing is held.
Figure: 1 TAC §55.112

§55.115. Form for Employer's Motion for Hearing on Applicability of Writ or Order of Withholding.
The following form is to be used by an employer of the obligor to request judicial determination as to the applicability of a writ or court order of withholding under the Texas Family Code §158.205 [~~§14.45(d) and §14.43(j)~~]. "Employer" is broadly defined in the Texas Family Code §101.012 [~~§14.30~~], to include individuals, partnerships, [~~corporations,~~] worker's compensation insurance carriers, [~~and~~] governmental entities and the United States, or any other entity that pays or owes earnings to an individual.
Figure: 1 TAC §55.115

§55.116. Notice of Administrative Writ of Withholding and the Order/Notice to Withhold Income for Child Support.

(a) This form is sent to the obligor by the Title IV-D agency or a domestic relations office [~~,~~] informing the obligor that withholding has commenced and providing procedures for contesting the withholding.
Figure: 1 TAC §55.116(a)

(b) This form is issued by the Title IV-D agency or domestic relations office to initiate withholding for the enforcement of an existing order.
Figure: 1 TAC §55.116(b)

§55.117. Request for Issuance of Order.
This form is used to request issuance of the Order/Notice to Withhold Income for Child Support.
Figure: 1 TAC §55.117

§55.118. Order/Notice to Withhold [~~Withholding~~] Income for Child Support.
This form is federally mandated for use in IV-D and non IV-D cases and may be used as a judicial or administrative withholding document, an original withholding document, amended withholding document, or to terminate withholding.
Figure: 1 TAC §55.118

§55.119. Forms for Child Support Lien Notice, for Release of Child Support Lien [~~Lien Release~~], and for Partial Release of Child Support Lien.

(a) The following form is to be filed with the county clerk of a county in which real or personal property of the obligor is believed to be located in accordance with the Texas Family Code, Chapter 157 [~~14~~], Subchapter G [~~F~~]. Notice of the lien may be given to any person known to be in possession of real or personal property of the obligor, and if such notice is given the property may not be paid over, released, sold, transferred, encumbered, or conveyed without incurring the penalties provided by the Texas Family Code, §157.324 [~~§14.981~~].
Figure: 1 TAC §55.119(a)

(b) The following form is to be filed with the county clerk of a county in which a child support lien has been filed when the payment in full of all child support, costs, and attorney fees has been made.
Figure: 1 TAC §55.119(b)

(c) The following form is to be filed with the person in possession of property to which a child support lien has attached, when the payment in full of all child support, costs and attorney fees has not been made, but the claimant has agreed to release specific property to the obligor.
Figure: 1 TAC §55.119(c)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stacey Napier
Deputy Attorney General
Office of the Attorney General
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SUBCHAPTER F. COLLECTIONS AND DISTRIBUTIONS

1 TAC §55.141

The Office of the Attorney General, Child Support Division proposes an amendment to 1 TAC §55.141, concerning contesting distribution of collections on child support obligations. The proposed amendment clarifies procedures regarding contesting distribution of collections on child support obligations, and updates an attached form that is used when contesting the distribution of

collections. The updated Request for Hearing form conforms to the Request for Hearing form currently used by the Office of the Attorney General.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended section as proposed is in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years the amended section as proposed is in effect, the public benefit as a result of the section is clarification of procedures and availability of the current Request for Hearing form used by the Office of the Attorney General.

Ms. Key has also determined that for the first five years the amended section as proposed is in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended section as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendment is authorized under Texas Family Code §231.002, which authorizes the State's Title IV-D agency to adopt rules for the provision of child support services.

The Texas Family Code, Chapter 231 is affected by the amended section.

§55.141. Contesting Distribution of Collections on Child Support Obligations.

(a) A custodial parent or other person entitled to receive child support:

(1) [~~whose family has received public assistance under the Texas Human Resources Code, Chapter 31,~~] may contest the amounts withheld from collections on child support obligations and retained by the State to be applied to unreimbursed public assistance provided to the family under Texas Human Resources Code, Chapter 31; or

(2) (No change.)

(b) When notified of a contest, the Office of the Attorney General shall provide a report showing the support collected on the obligation, how the collection was allocated between the contestant and the State, and the basis for that allocation. This report is not required if the contestant has previously received a monthly notice of collection report from the Office of the Attorney General covering the same time period. The Office of the Attorney General shall provide the contestant with the report or upon request a form for requesting an administrative hearing [~~to the contestant with the report or upon request~~].

(c) A hearing shall be conducted by the Office of the Attorney General upon the contestant's submission of a completed request for administrative review form. The request for administrative review must be submitted in writing not [~~no~~] later than 30 days after the date [~~that~~] the report in subsection (b) was prepared for the contestant. If the dispute is resolved informally before the hearing, the formal request shall be dismissed.

(d) The custodial parent may participate in the hearing, with or without a licensed representative. The custodial parent may submit any contentions and evidence in the form of a properly acknowledged [~~an~~] affidavit [~~properly acknowledged~~], thereby making [~~his or her~~] participation in the hearing unnecessary.

(e) The request for hearing shall be in the form that follows: Figure: 1 TAC §55.141(e)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Office of the Attorney General
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SUBCHAPTER G. AUTHORIZED COSTS AND FEES IN IV-D CASES

1 TAC §55.151, §55.152

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §55.151 and §55.152, concerning authorized costs and billing costs and fees in IV-D cases. Section 55.151 as proposed clarifies costs and fees that may be charged to the Office of the Attorney General by a clerk of the court. The proposed amendment to §55.152 updates the name of a billing form provided by the Office of the Attorney General.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the sections is the clarification of costs and fees in IV-D cases.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to adopt rules for the provision of child support services.

The Texas Family Code, Chapter 231 are affected by the amended sections.

§55.151. Authorized Costs and Fees in IV-D Cases.

(a) The clerk of the court may charge the Office of the Attorney General the following costs and fees in IV-D cases, including a case filed under Chapter 159 of the Texas Family Code:

(1) - (2) (No change.)

(3) fees for the issuance and delivery of orders and writs of income withholding in the amounts provided by Chapter 110 of the Texas Family Code; [~~and~~]

(4) a reasonable fee not to exceed $15 for filing an original administrative writ of withholding [~~with an effective date on or after September 1, 2001~~]. A fee cannot be charged for duplicate copies of an administrative writ of withholding; and[~~,~~]

(5) the fee for issuance of a subpoena as provided by §51.318(b)(1), Texas Government Code.

(b) (No change.)

§55.152. Billing for Costs and Fees in IV-D Cases.

Each county may bill the Office of the Attorney General monthly for fees and costs not previously billed. The county must credit the Office of the Attorney General each month for amounts reimbursed to the county [~~County~~] by the parties during the proceeding thirty (30) days. Monthly reimbursement requests should be submitted electronically or mailed using the IV-D Filing and Service Fees Reimbursement [~~Child Support Court Costs Processing~~] Form provided by the Office of the Attorney General.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. LICENSE SUSPENSION

1 TAC §55.203, §55.216

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §55.203 and §55.216, concerning forms used in the suspension of a license pursuant to Texas Family Code Chapter 232, and procedures used when a Petition to Suspend License is dismissed for want of prosecution. The proposed amendment to §55.203 updates the Notice of Filing of Petition to Suspend License to conform to the form currently used by the Office of the Attorney General. The proposed amendment to §55.216 clarifies procedures regarding the dismissal of a Petition to Suspend License for want of prosecution.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the sections are updated information to the public regarding the forms and procedures used by the Office of the Attorney General in the suspension of a license.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code, Chapter 232, which provides the Office of the Attorney General with the authority to establish procedures by rule for the payment of authorized fees.

The Texas Family Code, Chapter 232 is affected by the amended sections.

§55.203. Forms.

(a) Notice of Filing of Petition to Suspend License. The notice shall take the form as follows:
Figure: 1 TAC §55.203(a)

(b) - (f) (No change.)

§55.216. Dismissal of Petition for Want of Prosecution.

(a) (No change.)

(b) The coordinator shall send notice [~~Notice~~] of the administrative law judge's intent to dismiss [~~shall be sent by the coordinator~~] to each party who has entered an appearance[~~,~~] or to their representative of record.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER I. STATE DIRECTORY OF NEW HIRES

1 TAC §§55.301 - 55.308

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §§55.301 - 55.308, concerning the State Directory of New Hires. The proposed amendments update procedures within the State Directory of New Hires and reflect the current names of the program and state agencies. Included in the amendment is the current State of Texas New Hire Reporting Form promulgated by the Office of the Attorney General.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the sections is the clarification of procedures regarding the State Directory of New Hires program.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §234.104 which provides the Office of the Attorney General with the authority to establish by rule procedures for reporting employee information.

The Texas Family Code, Chapters 231 and 234 is affected by the amended sections.

§55.301. Scope.

Section 453A of the Social Security Act, (42 U.S.C. §653A), [~~found at 42 U.S.C. §653A~~], as amended by Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), requires each state to establish and maintain a State Directory of New Hires to provide a means for employers to assist in the state's efforts both to prevent fraud in the welfare, workers' compensation, and unemployment insurance programs, and to locate and/or collect from absent parents who owe child support by reporting information concerning newly hired and rehired employees directly to a centralized state database. This subchapter establishes within the Office of the Attorney General (Title IV-D agency) a centralized employee registry called the State Directory of New Hires and establishes procedures for employers to report employee information to the State Directory of New Hires under Chapter 234, Subchapter B [~~state directory of new hires pursuant to chapter 234, subchapter B~~] of the Texas Family Code.

§55.302. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Common paymaster--has the meaning as described in 26 CFR §31.3121(s)-1 [~~IRS Rev. Proc. 70-6, 1970-1~~].

(2) New hire--The term new hire shall have the meaning of any employee required to be reported to the State Directory of New Hires [~~state directory of new hires~~] under 453A of the Social Security Act within twenty days of the employee's [~~employees~~] first day on the job.

(3) (No change.)

(4) Employee--The [~~the~~] term employee means an individual who is an employee as defined in Chapter 24 of the Internal Revenue Code (IRC) of 1986; and does not include an employee of a federal or state agency performing counter intelligence functions, if the head of such agency has determined that reporting pursuant to section 453A of the Social Security Act with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission. Chapter 24 of the IRC and the regulations promulgated thereunder define an "employee" as every individual performing services if the relationship between the individual and the person for whom the services are performed is the legal relationship of employer and employee (see IRC section 3401(c) and 26 CFR §31.3401(c)-1). Generally, the legal relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the result to be accomplished, but also as to the details and means by which that result is to be accomplished.

(5) - (8) (No change.)

(9) Reporting [~~Payroll reporting~~] agent--Has the meaning as described in IRS Rev. Proc. 2007-38 [~~70-6, 9170-1, C.B.420~~].

§55.303. Employer New Hire Reporting Requirements.

(a) - (b) (No change.)

(c) All employers shall report new hire information on a Form W-4 or an equivalent form by first class mail, telephonically, or electronically [~~or magnetic media~~] as determined by the employer and in a format acceptable to the Title IV-D agency. The Title IV-D agency reserves the right to decline any type of form that it deems as illegible or inappropriate for new hire report processing and requests employers who elect to submit new hire reports via hardcopy to adopt the Employer New [~~new~~] Hire Reporting Form supplied by the IV-D agency.

(1) Formats available to employers include:

(A) Fully and accurately completed copy of the new employee's W-4 form with all mandatory information, as specified by Employer New Hire Reporting requirements, typed or written using large, capitalized lettering (cursive writing is not permitted);

(B) Employer New Hire Reporting [~~Report~~] Form supplied by the IV-D agency:
Figure: 1 TAC §55.303(c)(1)(B)

(C) (No change.)

(D) Facsimile; or [~~Magnetic tape or cartridge (see Electronic Reporting Specification Table);~~]

(E) Any other means authorized by the Title IV-D agency for conveying information which includes electronic transmission.

[~~(E) Diskette (see Electronic Reporting Specification Table);~~]

[~~(F) E-mail (see Electronic Reporting Specification Table);~~]

[~~(G) Facsimile; or~~]

[~~(H) Any other means authorized by the Title IV-D agency for conveying information which includes electronic transmission or delivery of data tapes.~~]

(2) (No change.)

[~~(3) All new hire reports submitted using diskette, magnetic tape, magnetic cartridge, or e-mail must be provided in accordance with the following New Hire reporting specifications for electronic reporting:~~]
[~~Figure: 1 TAC §55.303(c)(3)~~]

[~~(4) All new hire reports submitted using e-mail must be provided as an "e-mail attachment." All employers reporting via e-mail must use the following submission e-mail address for transmitting new hire reports electronically via e-mail: txhires@flash.net. Employers who wish to correspond with the Texas New Hire Operations Center for questions, technical assistance or problems, may use the following correspondence e-mail address: txenh@flash.net.~~]

(d) To ensure timely receipt of information, Texas employers are [~~shall be~~] required to report the hiring or rehiring of persons to the Title IV-D agency. Employer New Hire reports shall be considered timely if postmarked by the due date or if filed electronically, upon receipt by the agency. Employer New Hire reports are due:

(1) (No change.)

(2) in the case of an employer transmitting reports [~~magnetically or~~] electronically, by two [~~2~~] monthly transmissions (if necessary) not [~~less than 12 days nor~~] more than 16 days apart.

(e) Employers should [~~shall~~] send reports for newly hired or rehired employees to Texas Employer New Hire Reporting Operations Center, Post Office Box 149224, Austin, Texas 78714-9224 Telephone Number: 1-800-850-6442 [~~1-888-839-4473~~] Fax Number: 1-800-732-5015

(f) Questions regarding the Employer New Hire Reporting Program should be directed to the Texas Employer New Hire Reporting Operations Center at 1-800-850-6442 [~~1-888-TEX-Hire (1-888-839-4473)~~] or access Texas Employer New Hire Reporting on the Internet [~~World wide Web Home Page~~]. The Internet address is: http://employer.oag.state.tx.us [~~http//www.TexasNewHire.state.tx.us~~].

(g) Each employer submitting an incomplete or illegible report, upon request, must [~~shall~~] resubmit the incomplete or illegible data within 10 days after receiving notice.

§55.304. Common Paymaster.

A report filed by the common paymaster or [~~payroll~~] reporting agent of an employer is sufficient to meet the new hire reporting requirements for each of the related employees for which the common paymaster or payroll reporting agent provides new hire information.

§55.305. Multi-State Employers.

(a) An employer that has employees who are employed in Texas and one or more other states may choose to report to a state other than Texas provided the employer designates only one state in which such employer has employees; transmits the required reports using [~~magnetic or~~] electronic media authorized by the Title IV-D agency for conveying information; and notifies the Secretary of the Department of Health and Human Services [~~services~~], in writing, prior to reporting.

(b) When submitting written notification to the Secretary of the Department of Health and Human Services about the designation of the single State for Employer New Hire Reporting [~~new hire reporting~~], an employer should include the following information:

(1) The same Federal Employer Identification Number (FEIN) used for the Texas Workforce Commission,

(2) - (5) (No change.)

(c) (No change.)

(d) An employer can notify the Secretary of the Department of Health and Human Services in one of three ways:

(1) Notify the Secretary in writing at the following address: Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement Multi State Employer Notification [~~Registration~~], P.O. Box 509, Randallstown, MD 21133;

(2) (No change.)

(3) Notify the Secretary via the Internet by accessing the Multistate Employer option on the OCSE Internet [~~World Wide Web~~] home Page. The Internet address is: http://www.acf.hhs.gov/programs/cse/newhire/employer/home.htm [~~http://www.acf.dhhs.gov/programs/cse/newhire/index.html~~].

§55.306. Federal Government Employers.

Any department, agency, or instrumentality of the United States must report directly to the National Directory of New Hires established pursuant to 42 U.S.C. 653a. [~~both sections 313(b) of PRWORA and 453A of the Social Security Act.~~]

§55.307. Civil Money Penalties on Noncomplying Employers.

(a) An employer who knowingly violates any procedures found in §§55.301 - 55.308 of this title for reporting employee information may be liable for a civil penalty, which may not exceed: [~~The Title IV-D agency may assess a $500 penalty against a noncomplying employer if the failure to report information required by these rules and federal regulations is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report.~~]

(1) $25 for each occurrence in which an employer fails to report an employee; or

(2) $500 for each occurrence in which the conduct is the result of a conspiracy between the employer and employee to not supply a required report, or to submit a false or incomplete report

(b) The Attorney General may sue to collect the civil penalty.

§55.308. Confidentiality and Security.

(a) Confidentiality of Records. The records contained in the new hire directory shall be confidential and may be accessed for the following purposes only:

(1) - (2) (No change.)

(3) Administration of Employment Security and Workers' Compensation. State agencies operating employment security [~~(the Texas Workforce Commission)~~] and workers' compensation [~~(the Texas Workers' Compensation Commission)~~] programs shall have access to ENHR information reported by employers for the purposes of administering such programs.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. VOLUNTARY PATERNITY ACKNOWLEDGMENT PROCESS

1 TAC §§55.401 - 55.407

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §§55.401 - 55.407, concerning the voluntary paternity acknowledgment process. The proposed

amendments will clarify the voluntary paternity acknowledgment process and reflect the current name of the Texas Department of State Health Services, Vital Statistics Unit.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications on state or local government as a result of enforcing or implementing the sections.

Ms. Key has also determined that for each year of the first five years the amended sections are in effect, the public benefit as a result of the sections will be a clarification of the voluntary paternity acknowledgment process. There will be no significant fiscal implications for small businesses or individuals. In addition, Ms. Key has determined that there will be no local employment impact as a result of the amended sections.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized by Texas Family Code §160.314.

The Texas Family Code, Chapter 160, Subchapter D, Voluntary Acknowledgment of Paternity; and the Health and Safety Code, Chapter 192, Record of Acknowledgment of Paternity, are affected by the amended sections.

§55.401. Scope.

Fathers and mothers who wish to voluntarily establish paternity for their child may do so through any local child support office of the Office of the Attorney General, Child Support Division; the Texas Department of State Health Services, Vital Statistics Unit [~~state Bureau of Vital Statistics~~]; a local birthing hospital or birthing center; or any entity certified by the Office of the Attorney General to provide such services. The Acknowledgment of Paternity must be executed according to the rules contained herein and under the Texas Family Code, Chapter 160, Subchapter D, Voluntary Acknowledgment of Paternity. Entities that are required by law to provide paternity establishment services and entities that [~~wish~~] voluntarily elect to provide paternity establishment services must abide by the rules of this subchapter.

§55.402. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acknowledgment of Paternity form--An agreement affirming parentage for a child signed by both the man claiming to be the biological father and the mother, that is executed on a form prescribed by the Texas Department of State Health Services, Vital Statistics Unit [~~Bureau of Vital Statistics~~]. The mother and the father may sign separate acknowledgments before or after the birth of the child.

(2) Denial of Paternity form--A statement [~~Statement~~] executed by a presumed father denying parentage of the child of whom he is presumed to be the father, on a form prescribed by the Texas Department of State Health Services, Vital Statistics Unit [~~Bureau of Vital Statistics~~].

(3) - (4) (No change.)

(5) Parent Survey on the Acknowledgment of Paternity--A form promulgated by the Office of the Attorney General to assist parents and the certified entity in the completion of the Acknowledgment of Paternity.

§55.403. Forms.

The certified entities offering voluntary paternity establishment services may obtain the prescribed Acknowledgment of Paternity and Denial of Paternity forms by contacting the Texas Department of State Health Services, Vital Statistics Unit [~~Bureau of Vital Statistics~~].

§55.404. Voluntarily Acknowledging Paternity.

(a) A man claiming to be the biological father and the mother may establish paternity before or after the birth of their child by voluntarily acknowledging paternity through a certified entity providing such services. The mother and father must read the Acknowledgment of Paternity form. In addition, both must listen to or view a video presentation of the rights and responsibilities of a parent, and alternatives to and legal consequences of acknowledging or denying paternity. Both the mother and father, separately or together, must then:

(1) - (2) (No change.)

(b) (No change.)

(c) The certified entity is responsible for filing the Acknowledgment of Paternity form with the Texas Department of State Health Services, Vital Statistics Unit, and providing all signatories with a copy of the form [~~Bureau of Vital Statistics~~].

§55.405. Denial of Paternity Form.

If the mother declares in the Acknowledgment of Paternity form that there is a presumed father of the child, the acknowledgment must be accompanied by a Denial of Paternity form signed by the mother and the presumed father, unless the presumed father is the man who is acknowledging paternity. The Denial of Paternity is signed using the same procedures as the Acknowledgment of Paternity outlined in §55.404 of this title. The Acknowledgment of Paternity form and the Denial of Paternity form may be filed with the Texas Department of State Health Services, Vital Statistics Unit [~~Bureau of Vital Statistics~~] separately or simultaneously. If the acknowledgment and denial are both necessary, neither document is valid until both documents are filed.

§55.406. Entities Providing [~~That May Provide~~] Paternity Establishment Services.

(a) The following entities must provide voluntary paternity establishment services after being certified by the Office of the Attorney General:

(1) all [~~All~~] public and private birthing hospitals;[~~,~~]

(2) all birthing centers;[~~, and~~]

(3) the Texas Department of State Health Services, Vital Statistics Unit; and [~~state Bureau of Vital Statistics are required to provide voluntary paternity establishment services, but only after being certified by the Office of the Attorney General.~~]

(4) a registered nurse working in a partnership program funded through the nurse-family partnership competitive grant program under Chapter 531, Subchapter M, Texas Government Code.

(b) The following entities may provide voluntary paternity establishment services at their option, but only after being certified by the Office of the Attorney General:

(1) local birth registrars;

(2) public health clinics;

(3) private health care providers;

(4) certified nurse midwives;

(5) licensed [~~documented~~] midwives;

(6) agencies providing assistance or services under Title IV, Part A of the Social Security Act, agencies providing food stamp

eligibility service, and agencies providing child support enforcement (IV-D) services;

(7) Head Start, child care facilities, and individual child care providers;

(8) community action agencies and community action programs;

(9) secondary education schools;

(10) legal aid agencies;

(11) private attorneys; and

(12) any public or private health, welfare or social services organization.

§55.407. Certification.

All birthing hospitals, all birthing centers, the Texas Department of State Health Services, Vital Statistics Unit, a registered nurse working in a partnership program funded through the nurse-family partnership competitive grant program [~~state Bureau of Vital Statistics~~], and each certified entity must have staff who:

(1) - (2) (No change.)

(3) receive training from the Office of the Attorney General at least once yearly on the requirements for voluntarily establishing paternity. (The training is not to exceed eight (8) hours at locations throughout the state established by the Office of the Attorney General and the Texas Department of State Health Services, Vital Statistics Unit [~~Bureau of Vital Statistics~~]).

(4) use only the Acknowledgment of Paternity and Denial of Paternity forms promulgated by the Texas Department of State Health Services, Vital Statistics Unit [~~Bureau of Vital Statistics~~].

(5) use the brochures and training manuals, including the oral and written information, provided by the Office of the Attorney General and the Texas Department of State Health Services, Vital Statistics Unit [~~Bureau of Vital Statistics~~].

(6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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1 TAC §55.408

The Office of the Attorney General, Child Support Division proposes new §55.408, concerning the Parent Survey on the Acknowledgment of Paternity. The proposed new section will outline the procedures regarding the use of the Parent Survey in the voluntary paternity acknowledgment process.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the section as proposed is in effect, there will be no significant fiscal implications on state or local government as a result of enforcing or implementing the section.

Ms. Key has also determined that for each year of the first five years the section is in effect, the public benefit as a result of the new section will be a clarification of the voluntary paternity acknowledgment process. There will be no significant fiscal implications for small businesses or individuals. In addition, Ms. Key has determined that there will be no local employment impact as a result of the new section.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed new section is authorized by Texas Family Code §160.314.

The Texas Family Code, Chapter 160, Subchapter D, Voluntary Acknowledgment of Paternity; and the Health and Safety Code, Chapter 192, Record of Acknowledgment of Paternity, is affected by the new section.

§55.408. Parent Survey.

(a) Each certified entity must provide the parents (and presumed father, if applicable) with the opportunity to complete and sign the Parent Survey if the parent was provided the opportunity to voluntarily acknowledge paternity.

(b) If the parents or presumed father do not wish to complete the survey, the certified entity must note this on the form.

(c) The certified entity must retain the parent survey in its files. Figure: 1 TAC §55.408(c)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. RELEASE OF INFORMATION

1 TAC §55.501

The Office of the Attorney General, Child Support Division proposes an amendment to 1 TAC §55.501, concerning requests to the IV-D agency for information. The proposed amendment revises language regarding who may request information from the IV-D agency, and the type of information that may be released.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended

section as proposed is in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years the amended section as proposed is in effect, the public benefit as a result of the section is the clarification of who may request information from a IV-D agency and the types of information that may be released.

Ms. Key has also determined that for the first five years the amended section as proposed is in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended section as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendment is authorized under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 231.

The Texas Family Code, Chapter 231 is affected by the amended section.

§55.501. Release of Information.

(a) Upon request to the IV-D agency by an authorized person or his or her authorized representative, the IV-D agency may provide the following information [~~about a IV-D case involving the authorized person~~]:

(1) (No change.)

(2) copies of legal documents that have been filed with the court and that are maintained in the files and records of the agency, so long as the authorized person is a party and the documents have not been sealed by the court or there is no order prohibiting the release of the documents;

(3) - (4) (No change.)

(5) records of child support payments and any arrearage balances regarding the authorized person's child support case;

(6) - (7) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Office of the Attorney General

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SUBCHAPTER M. INTERCEPT OF INSURANCE CLAIMS

1 TAC §§55.601, 55.602, 55.604

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §§55.601, 55.602, and 55.604, concerning the intercept of insurance claims pursuant to Texas Family Code §231.015. The proposed amendments clarify the procedures used by the IV-D agency regarding the intercept of certain liability insurance settlements or awards for claims in the satisfaction of arrearage amounts.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the sections is the clarification of procedures regarding the insurance intercept program.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §231.015.

The Texas Family Code, Chapter 231 is affected by the amended sections.

§55.601. Scope.

Section 231.015 of the Family Code requires [~~tasks~~] the Child Support Division of the Office of the Attorney General, in consultation with the Texas Department of Insurance and representatives of the insurance industry, to establish [~~with establishing~~] by rule a pilot program whereby insurance companies may voluntarily cooperate with the Child Support Division in matching the names of those individuals who are or may be due liability insurance settlements or awards with the names of obligors who owe past-due child support. When such an individual is identified, the Child Support Division will file a child support lien on the pending settlement or award to secure the payment of past-due support. This subchapter explains how the matching process and the lien process work.

§55.602. Child Support Lien Network.

The Office of the Attorney General has contracts with [~~joined the Child Support Lien Network (CSLN), a consortium of State child support enforcement agencies headed by~~] the State of Rhode Island and Providence Plantations to participate in the Child Support Lien Network (CSLN). Each of the participating states [~~States~~] provides CSLN with a periodically updated list of its child support obligors. CSLN provides participating insurance companies with two methods of matching a pending settlement or award: an automatic data match, or an interactive lookup. [~~The automatic data match is preferred because insurance companies need only take action on those claims that electronically match to a child support obligor.~~]

§55.604. Interactive Lookup.

(a) An insurance company may [~~choose to~~] check the name of an individual insurance claimant to see if there are outstanding child support obligations by accessing the CSLN database of child support obligors.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER N. NATIONAL MEDICAL SUPPORT NOTICE

1 TAC §§55.701, 55.703 - 55.705, 55.707

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §§55.701, 55.703 - 55.705, and 55.707, concerning the National Medical Support Notice. The proposed amendments clarify the responsibilities of the IV-D Agency and employer regarding the use of the National Medical Support Notice in the enforcement of health care coverage.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the sections is the clarification of procedures regarding the National Medical Support Notice.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §154.186, which provides the Office of the Attorney General with the authority to prescribe forms and procedures consistent with federal law for use of the National Medical Support Notice.

The Texas Family Code, Chapter 154 is affected by the amended sections.

§55.701. Scope.

The National Medical Support Notice ("the Notice") is intended to provide a standardized means of communication between State child support enforcement agencies, employers, and parents. The Notice will facilitate the process of enrolling children in the group health plans for which their parents are eligible and create a uniform and streamlined process for enforcement of health care coverage [~~medical child support~~] to ensure that all children receive the health care coverage for which they are eligible and to which they are entitled.

§55.703. Use of Form.

The Notice must be used by the Title IV-D Agency. It may be used in conjunction with an order in any Suit Affecting the Parent-Child Relationship [~~order~~] to enforce health care coverage [~~medical child support~~].

§55.704. Title IV-D Agency Responsibilities.

(a) (No change.)

(b) In a IV-D case, [~~Within two business days after the date of entry of an order for medical child support,~~] the Title IV-D Agency may [~~must~~] transfer the National Medical Support Notice to the employer of an employee obligated to provide health care coverage within two business days after the date of entry of the employee [~~who is an obligor in a IV-D case~~] in the State Directory of New Hires.

(c) The Title IV-D Agency must promptly notify the employer when there is no longer a current order for health care coverage [~~medical child support~~] in effect for which the IV-D Agency [~~agency~~] is responsible.

(d) (No change.)

§55.705. Employer Responsibilities.

(a) - (d) (No change.)

(e) The employer must notify the Title IV-D Agency should the [~~state or~~] federal withholding limitation [~~or prioritization~~] prevent the withholding from the employee's income of the amount reported to obtain coverage under the terms of the plan.

(f) (No change.)

§55.707. Employee Contest Procedures.

(a) The employee may contest withholding under the Notice based upon a mistake of fact by requesting a review by the Title IV-D agency no later than 75 business days after receipt of the Notice by the employer.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER O. STATE DISBURSEMENT UNIT

1 TAC §55.804

The Office of the Attorney General, Child Support Division proposes an amendment to 1 TAC §55.804, concerning the disbursement of child support payments to the obligee through the Texas Debit card. The proposed amendment will clarify how an obligee may opt out of the Texas Debit Card program.

Alicia G. Key, Attorney General for the Child Support Division, has determined that for the first five years the amended section as proposed is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or implementing the section.

Ms. Key has also determined that for each year of the first five years the amended section is in effect, the public benefit as a result of the section will be compliance with state and federal requirements. There will be no significant fiscal implications for small businesses or individuals. In addition, Ms. Key has determined that there will be no local employment impact as a result of the amended section.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendment is authorized by Texas Family Code §234.006.

Texas Family Code Chapter 234, State Case Registry, Disbursement Unit and Directory of New Hires, Subchapter A is affected by the amended section.

§55.804. Methods of Disbursement.

(a) (No change.)

(b) An obligee may opt out of the Texas Debit Card program and receive a state warrant by calling 1-866-729-6159. [~~The opt out form can be obtained by calling 1-866-729-6159 or can be obtained on the Office of the Attorney General's website at www.oag.state.tx.us.~~]

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Office of the Attorney General

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CHAPTER 66. FAMILY TRUST FUND DISBURSEMENT PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILTY

1 TAC §66.1, §66.3

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §66.1 and §66.3, concerning definitions and costs related to the Family Trust Fund. The proposed amendments add an acronym to the definition section and update the amount of money that each county clerk remits to the comptroller for deposit to the Family Trust Fund upon collection of fees for each marriage license issued.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years these sections as proposed are in effect, the public benefit as a result of the amended sections is the clarification of information related to the Family Trust Fund.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §2.014, which provides the Office of the Attorney General with the authority to adopt rules for the provision of funds for grants or contracts that support services that assist families.

The Texas Family Code, §2.014 is affected by the amended sections.

§66.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) HUB--Historically Underutilized Businesses; [~~.~~]

(8) RFA--Request for Application.

§66.3. Source of Funds.

The Family Trust Fund was created by Texas Family Code §2.014 as a trust fund with the state comptroller to be administered by the OAG for the beneficiaries of the fund. Each county clerk of Texas is required to collect $30 of each marriage license issued and to remit $10 [~~$3~~] of that fee to the comptroller for deposit in the Family Trust Fund. The funds shall be deposited with the State Comptroller's Office in the Family Trust Fund.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §66.77, §66.99

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §66.77 and §66.99, concerning the administration of grants related to the Family Trust Fund. The proposed amendments update the time line in which an invoice must be submitted and the amount of time a grantee must properly obligate and expend funds to satisfy outstanding liabilities.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Key also has determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the sections is the clarification of information related to the Family Trust Fund.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §2.014, which provides the Office of the Attorney General with the authority to adopt rules for the provision of funds for grants or contracts that support services that assist families.

The Texas Family Code, §2.014 is affected by the amended sections.

§66.77. Invoices.

A grantee must ensure that its final invoice is postmarked no later than the 45th [~~90th~~] calendar day (liquidation date as defined in the application package) after the end of the grant period and mailed to: [~~the~~] OAG[~~.~~] Grant Coordinator, 300 West 15th Street, 15th Floor, P.O. Box 12548, Austin, TX 78711-2548. If this date falls on a weekend or federal holiday, then the OAG will honor a postmark on the next business day. On the liquidation date, if grant funds are on hold for any reason, the funds will lapse and cannot be recovered by the grantee. Under no circumstances will the OAG make payments to a grantee who submits its invoice with a postmark after the above deadlines.

§66.99. Payment of Outstanding Liabilities.

A grantee must properly obligate and expend funds to satisfy all outstanding liabilities no later than 45 [~~90~~] days after the end of the grant period. The OAG will not make any reimbursements to a grantee unless the final request for funds is postmarked by the 45th [~~90th~~] day after the end of the grant period. If the 45th [~~90th~~] day falls on a weekend or federal holiday, the OAG will honor receipt or a postmark on the next business day. All payments made after the completion of the grant period must relate to obligations encumbered prior to the end of the grant period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

SUBCHAPTER D. ERADICATION OF BRUCELLOSIS IN CERVIDAE

4 TAC §35.82

The Texas Animal Health Commission ("TAHC" or "Commission") proposes amendments to Chapter 35, Subchapter D, §35.82, concerning the Eradication of Brucellosis in Cervidae. Section 35.82 contains requirements for certified brucellosis free cervidae herds and establishes the procedures and standards in order to make this determination.

The regulations describe general requirements for the collection and submission of blood samples to approved laboratories for testing, recognition of official tests, and the interpretation standards for official tests which are necessary to recognize herds which have voluntarily conducted whole herd testing in order to achieve Certified Brucellosis Free Cervidae Herd status. Herds which have achieved this status have distinct advantages in the marketability and interstate movement of animals. The current state requirements provide that for recertification of herd status, retests be conducted 33 to 39 months from the anniversary date.

These requirements were recently implemented by the Commission. That proposal to amend the regulations was published for comment in the February 23, 2007, issue of the *Texas Register* (32 TexReg 687). The amendment for recertification of herd status, extended the herd status from 24 months to 36 months, with the recertification test being required 33 - 39 months from the anniversary.

However, the new regulation did not clearly specify that the recertification test be conducted within each 33 - 39 month period from the anniversary date of the original certification test. In other words, the recertification test must be conducted within three months before or three months after each three year anniversary of the original certification test. The purpose of this proposed amendment is to more clearly define to program participants the correct timeframe within which the recertification test

must be performed. Additionally, the regulation is amended in order to provide that only two (2) consecutive annual tests will be required for initial certification, instead of the current standard of three (3) tests as stated in the regulation.

FISCAL NOTE

Ms. Angela Lucas, Deputy Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. Implementation of this rule poses no significant fiscal impact on small or micro-businesses. In response to the requirements for a Economic Impact Statement and Regulatory Analysis this rule will not have an adverse impact on small businesses. The rule will increase the timeframes for when a test is required to maintain herd certification and therefore will decrease the overall cost for a cervid producer maintaining a herd certification.

PUBLIC BENEFIT NOTE

Ms. Lucas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that the program will reflect the proposed national standard.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These proposed rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Dolores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also §161.054 authorizes the commission to regulate, by rule, the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state. Section 163.061 authorizes the commission to adopt rules for Brucellosis control.

No other statutes, articles, or codes are affected by the amendment.

§35.82. Requirements for Certified Brucellosis Free Cervidae Herd.

(a) Complete and sign a herd plan agreement with the Texas Animal Health Commission and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services.

(b) Testing will be on a herd basis. For initial certification, all sexually intact cervids in the herd that are 12 months of age or older must have two [~~three~~] consecutive negative tests 9 to 15 months apart. Once certified status of the herd has been attained, the herd is certified for 36 [~~24~~] months. All previously [~~Previously~~] tested animals must be accounted for on a following test.

(c) Recertification.

(1) To qualify for recertification, the herd must pass a test within a period of 33 to 39 months of the anniversary date. The recertification period will be 36 months from the anniversary date, and not 36 months from the date of the recertification test. For continuous certification, the herd must have a negative test of all animals, required to be tested, conducted within 90 days before the certification anniversary date. If the test is not conducted prior to the anniversary date, but is conducted within 90 days following the anniversary date, the [~~For continuous certification, the herd must have a negative test of all animals required to be tested conducted within 90 days before the certification anniversary date. If the certification test is conducted within 90 days after the anniversary date, the certification period will be 33 to 39 months from the anniversary and not 33 to 39 months from the recertifying test. During the interval between the anniversary date and the recertifying test,~~] certification will be suspended until the recertification test is completed. If a herd blood test for recertification is not conducted within 90 days after the anniversary date, the certification requirements are the same as for initial certification. A recertification test must be conducted every 33 to 39 months after initial certification in order to maintain Certified Brucellosis Herd Status.

(2) If suspects or reactors are found on recertification testing, certification status will be suspended and a herd investigation will be initiated.

(d) Movement into a certified brucellosis-free cervid herd

(1) From other certified brucellosis-free cervid herds. Animals originating from other certified brucellosis-free cervid herds do not need to be tested prior to movement.

(2) From other herds. Animals purchased from cervid herds not certified brucellosis-free cannot be considered part of the certified herd until the following three serologic tests have been conducted:

(A) Within 30 days prior to movement from the herd of origin;

(B) Between 60 and 180 days after addition to the certified brucellosis-free cervid herd; and

(C) As part of the herd test on the recertification test following the second test above.

(e) Recognition of certified brucellosis-free cervid herds. The Texas Animal Health Commission and the APHIS AVIC will issue a certified brucellosis-free cervid herd certificate when the herd first qualifies. Recertification will be done by renewal certificate showing only the certified free herd number, number of animals, and owner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 29, 2007.

TRD-200705935
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 719-0700

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §61.80

The Texas Department of Licensing and Regulation ("Department") proposes amendments to an existing rule at 16 Texas Administrative Code, Chapter 61, §61.80 regarding the combative sports program fees.

The amendment to §61.80 proposes to decrease the annual license application and renewal fee for a contestant from $30 to $20 and to decrease the permit fee per live professional event and the simultaneous telecast of a live contest on a closed circuit telecast in which fees are charged for admission, from $500 to $100.

The Department is required to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The fees currently in place are above the amount required by the Department to cover costs. The decrease would not adversely affect the administration and enforcement of the combative sports program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the proposed rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be lower fees for annual license applications and renewals and lower permit fees.

The anticipated economic effect on small or micro-businesses or to persons who are required to comply with the rule as amended will be lower fees for annual license applications and renewals and lower permit fees. There will be no additional cost to small or micro-businesses or to persons who may be required to comply with the section as proposed. The agency has also determined that the rule will have no adverse economic effect on small businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2052, which authorize the Department to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the proposal.

§61.80. Fees.

(a) The annual fee shall accompany each license or registration application or renewal as follows.

(1) (No change.)

(2) Contestant--$20 [~~$30~~]

(3) - (11) (No change.)

(b) (No change.)

(c) Permit Fee--$100 [~~$500~~] per live professional event and the simultaneous telecast of a live contest on a closed circuit telecast in which fees are charged for admission.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706075
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 463-7348

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CHAPTER 73. ELECTRICIANS

16 TAC §§73.10, 73.80, 73.100

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, Chapter 73, §§73.10, 73.80, and 73.100 regarding the electricians program.

Section 73.10 is amended by adding new paragraph (26) to make it clear and to memorialize the agency's long-standing interpretation that advertising as an electrical contractor or electrical sign contractor or advertising that one performs electrical work or electrical sign work is an "offer to perform" within the meaning of the statutory provision that requires persons or entities who perform or offer to perform electrical work to be licensed.

The amendment to §73.80 proposes to decrease the application and renewal fees for master electricians and master sign electricians from $65 to $50; journeyman electricians and journeyman sign electricians from $40 to $35; and electrical contractors from $125 to $115. The Department is required to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The fees currently in place are above the amount required by the Department to cover costs. The decrease would not adversely affect the administration and enforcement of the electricians program.

The amendment to §73.100 proposes to adopt the most recent version of the National Electrical Code as the code for the state. This rule is necessary to comply with the provisions of Texas Occupations Code, §1305.101(a)(2) which requires the Commis-

sion to adopt the revised code after it is amended and published every three years.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendments to §73.10 and §73.100 will not have a fiscal impact on any governmental entity. The amendment to §73.80 will reduce revenue to the Department. As noted above the reduced revenues will not adversely affect the administration and enforcement of the electricians program.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be a clearer understanding that one who advertises as an electrical contractor or advertises that one performs electrical work must be licensed, lower application and renewal fees, and the adoption of the most recent National Electrical Code.

The anticipated economic effect on small or micro-businesses or to persons who are required to comply with the rules as amended will be lower application and renewal fees for master electricians and master sign electricians, journeyman electricians and journeyman sign electricians, and electrical contractors. There will be no additional cost to small or micro-businesses or to persons who may be required to comply with the sections as proposed. The agency has also determined that the proposed rules will have no adverse economic effect on small businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 1305 and Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 1305 and Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§73.10. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) - (25) (No change.)

(26) Offer to perform--To make a written or oral proposal, to contract in writing or orally to perform electrical work or electrical sign work, or to advertise in any form through any medium that a person or business entity is an electrical contractor or electrical sign contractor, or that implies in any way that a person or business entity is available to contract for or perform electrical work or electrical sign work.

§73.80. Fees.

(a) Application and renewal fees:

(1) Master Electrician--$50 [~~$65~~]

(2) Master Sign Electrician--$50 [~~$65~~]

(3) Journeyman Electrician--$35 [~~$40~~]

(4) Journeyman Sign Electrician--$35 [~~$40~~]

(5) - (6) (No change.)

(7) Electrical Contractor--$115 [~~$125~~]

(8) - (12) (No change.)

(b) - (d) (No change.)

§73.100. Technical Requirements.

Effective September 1, 2008 [~~July 1, 2005~~] the Department adopts the National Electrical Code, 2008 [~~2005~~] Edition as it existed on August 15, 2007 [~~August 5, 2004~~] as adopted by the National Fire Protection Association, Inc.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706076
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board proposes amendments to §1.16, concerning contracts for materials and services. Specifically, this amendment will provide that in certain instance in which the agency has no discretion with regard to grants or contracts, such contracts need not be approved by the Board or the Agency Operations Committee.

William Franz, General Counsel, has determined that for each year of the first five years the proposed amendments are in effect there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended section.

Mr. Franz has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the amended section would be efficient execution of statutorily required grants or contracts. There is no effect on small businesses. There are no significant anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to William Franz, General Counsel, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §61.027 which provides the Coordinating Board with the authority to adopt rules.

The amendments will effect Texas Education Code §61.027.

§1.16. Contracts for Materials and Services.

(a) - (e) (No change.)

(f) In the event that the agency is required by statute to enter into a contract for the award of a grant with a value of over $100,000, approval of such a request or contract by the Board or the Agency Operations Committee pursuant to subsection (a) or (b) of this section, as appropriate, shall not be required when such an award involves no [~~significant exercise of~~] discretion by the Board or agency staff. The Commissioner shall approve such contracts and report them to the Board at the next quarterly Board meeting following the approval.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706074
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.24

The State Board of Education (SBOE) proposes an amendment to §74.24, concerning credit by examination. The section establishes provisions relating to acceleration for primary school grade levels and credit for secondary school academic subjects. The proposed amendment would require an annual report by an outside auditor for examinations developed by The University of Texas at Austin and Texas Tech University. The audit would review a subset of examinations to confirm alignment with the Texas Essential Knowledge and Skills (TEKS).

General provisions in 19 TAC §74.24 include the option for school districts to administer examinations developed by Texas Tech University or The University of Texas at Austin for credit for secondary school academic subjects.

During the February 2007 meeting of the Committee on Instruction, the committee chair instructed Texas Education Agency (TEA) staff to send correspondence requesting that the two institutions provide the information necessary for review of each of their examinations used for credit by examination. Correspondence was sent to the institutions requesting the review. Staff members from both universities have responded that the process for aligning the examinations with the TEKS is underway for some examinations and completed for others.

During the July 2007 committee meeting, public testimony raised additional concerns regarding the examinations. The committee chair asked staff to investigate the possibility of a third party review of the updated examinations. During the September 2007 meeting, the committee instructed staff to draft proposed changes to the rule for action at the November 2007 meeting that would require an annual report by an outside auditor to confirm TEKS alignment of a subset of examinations developed by The University of Texas at Austin and Texas Tech University.

During the November 2007 meeting, the SBOE approved for first reading and filing authorization a proposed amendment to §74.24 that would add language in subsection (a)(2) specifying that these two entities shall: ensure that their assessments are aligned with the TEKS, arrange for a third-party audit of 20% of their assessments annually, and report the results of each audit to the TEA by May 31 of each year.

Susan Barnes, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state and local government as a result of enforcing or administering the amendment. The University of Texas at Austin and Texas Tech University will be required to pay for an annual external audit of their examinations. The agency is unable to determine the cost of such an audit. It is anticipated that universities might pass the cost on to local school districts by increasing the fee per examination. There are currently 74,000 examinations administered throughout the state each year.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be that students would have appropriate options for examinations for acceleration and credit by examination that are aligned to the TEKS. There will be no effect on small businesses. There will be anticipated economic cost to persons who are required to comply with the proposed amendment. There will be an annual cost to the universities to pay for an annual external audit of their examinations. It is anticipated that universities might pass the cost on to local school districts by increasing the fee per examination, although the agency is unable to determine the cost of such an audit.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §28.023, which authorizes the State Board of Education to establish guidelines by which a school district shall develop or select for board review examinations for acceleration for each primary school grade level and for credit for secondary school academic subjects.

The amendment implements the Texas Education Code, §28.023.

§74.24. Credit by Examination.

(a) General provisions.

(1) A school district must provide at least three days between January 1 and June 30 and three days between July 1 and December 31 annually when examinations for acceleration for each primary school grade level and for credit for secondary school academic

subjects required under Texas Education Code, §28.023, shall be administered in Grades 1-12. The days do not need to be consecutive but must be designed to meet the needs of all students. The dates must be publicized in the community.

(2) A school district shall not charge for an examination [~~exam~~] for acceleration for each primary school grade level or for credit for secondary school academic subjects. If a parent requests an alternative examination, the district may administer and recognize results of a test purchased by the parent or student from Texas Tech University or The University of Texas at Austin.

(A) Texas Tech University and The University of Texas at Austin shall ensure that the assessments they provide for the purposes of this section are aligned with and contain appropriate breadth of coverage of the Texas Essential Knowledge and Skills for the appropriate course.

(B) Texas Tech University and The University of Texas at Austin shall arrange for a third party to conduct an audit, on a rotating basis, of at least 20% of the assessments they provide for the purposes of this section. The audit shall be conducted annually.

(C) The results of each audit shall be provided to the Texas Education Agency in the form of a report to be delivered no later than May 31 of each year.

(3) A school district must have the approval of the district board of trustees to develop its own tests or to purchase examinations that thoroughly test the essential knowledge and skills in the applicable grade level or subject area.

(4) A school district may allow a student to accelerate at a time other than one required in paragraph (1) of this subsection by developing a cost-free option approved by the district board of trustees that allows students to demonstrate academic achievement or proficiency in a subject or grade level.

(b) Assessment for acceleration in kindergarten through Grade 5.

(1) A school district must develop procedures for kindergarten acceleration that are approved by the district board of trustees.

(2) A student in any of Grades 1-5 must be accelerated one grade if he or she meets the following requirements:

(A) the student scores 90% on a criterion-referenced test for the grade level he or she wants to skip in each of the following areas: language arts, mathematics, science, and social studies;

(B) a school district representative recommends that the student be accelerated; and

(C) the student's parent or guardian gives written approval for the acceleration.

(c) Assessment for course credit in Grades 6-12.

(1) A student in any of Grades 6-12 must be given credit for an academic subject in which he or she has had no prior instruction if the student scores 90% on a criterion-referenced test for the applicable course.

(2) If a student is given credit in a subject on the basis of an examination, the school district must enter the examination score on the student's transcript.

(3) In accordance with local school district policy, a student in any of Grades 6-12 may be given credit for an academic subject in which he or she had some prior instruction, if the student scores 70% on a criterion-referenced test for the applicable course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706054
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

The Texas Board of Architectural Examiners proposes an amendment to §1.5, concerning terms defined within the rules. The amendment defines the terms "energy efficient design" and "sustainable design" to implement legislation which will require registrants to annually obtain continuing education in energy efficient and sustainable design effective September 1, 2008. The purpose for the proposed amendment is to provide registrants guidance in the nature of the educational programs they must complete to fulfill the new requirement.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no significant fiscal impact on the Texas Board of Architectural Examiners as a result of administering the proposed amendment. There will be no fiscal impact on other state agencies or on local government as no other agency will be responsible for enforcing or administering the proposal.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: registrants will have clear direction on the subject matter for which they must obtain continuing education in energy efficiency and sustainable design. The amended rule will have no impact on small business or on micro-business. There will be no change in the cost to persons required to comply with the amended section.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.356 of the Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary to enforce laws within the agency's jurisdiction and which require the Board to recognize continuing education programs for its certificate holders, including programs related to sustainable or energy efficient design standards.

The proposed amendment does not affect any other statutes.

§1.5. Terms Defined Herein.

The following words, terms, and acronyms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (27) (No change.)

(28) Emeritus Architect (or Architect Emeritus)--An honorary title that may be used by an Architect who has retired from the Practice of Architecture in Texas pursuant to Texas Occupations Code, §1051.357.[.]

(29) Energy-Efficient Design--The design of a project and the specification of materials to minimize the consumption of energy in the use of the project. The term includes energy efficiency strategies by design as well the incorporation of alternative energy systems.

(30) [~~(29)~~] Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed architectural project from a technical architectural standpoint.

(31) [~~(30)~~] Good Standing--

(A) a registration status signifying that an Architect is not delinquent in the payment of any fees owed to the Board or

(B) an application status signifying that an Applicant or Candidate is not delinquent in the payment of any fees owed to the Board, is not the subject of a pending TBAE enforcement proceeding, and has not been the subject of formal disciplinary action by an architectural registration board that would provide a ground for the denial of the application for architectural registration in Texas.

(32) [~~(31)~~] Governmental Entity--A Texas state agency or department; a district, authority, county, municipality, or other political subdivision of Texas; or a publicly owned Texas utility.

(33) [~~(32)~~] Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

(34) [~~(33)~~] IDP--The Intern Development Program as administered by NCARB.

(35) [~~(34)~~] Inactive--A registration status signifying that an Architect may not Practice Architecture in the State of Texas.

(36) [~~(35)~~] Intern Development Program (IDP)--A comprehensive internship program established, interpreted, and enforced by NCARB.

(37) [~~(36)~~] Intern Development Training Requirement--Architectural experience necessary for an Applicant to obtain architectural registration by examination in Texas.

(38) [~~(37)~~] Institutional Residential Facility--A building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietors or operators of the building. Hospitals, dormitories, nursing homes and other assisted living facilities, and correctional facilities are examples of buildings that may be Institutional Residential Facilities.

(39) [~~(38)~~] Licensed--Registered.

(40) [~~(39)~~] Member Board--An architectural registration board that is part of the nonprofit federation of architectural registration boards known as NCARB.

(41) [~~(40)~~] NAAB--National Architectural Accrediting Board.

(42) [~~(41)~~] National Architectural Accrediting Board (NAAB)--An agency that accredits architectural degree programs in the United States.

(43) [~~(42)~~] National Council of Architectural Registration Boards (NCARB)--A nonprofit federation of architectural registration boards from fifty-five (55) states and territories of the United States.

(44) [~~(43)~~] NCARB--National Council of Architectural Registration Boards.

(45) [~~(44)~~] Nonregistrant--An individual who is not an Architect.

(46) [~~(45)~~] Practice Architecture--Perform or do or offer or attempt to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(47) [~~(46)~~] Practicing Architecture--Performing or doing or offering or attempting to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(48) [~~(47)~~] Practice of Architecture--A service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters.

(A) The term includes:

(i) establishing and documenting the form, aesthetics, materials, and construction technology for a building, group of buildings, or environs intended to be constructed or altered;

(ii) preparing or supervising and controlling the preparation of the architectural plans and specifications that include all integrated building systems and construction details, unless otherwise permitted under Texas Occupations Code, §1051.606(a)(4); and

(iii) observing the construction, modification, or alteration of work to evaluate conformance with architectural plans and specifications described in clause (ii) of this subparagraph for any building, group of buildings, or environs requiring an architect.

(B) The term "practice of architecture" also includes the following activities which, pursuant to Texas Occupations Code §1051.701(a), may be performed by a person who is not registered as an Architect:

(i) programming for construction projects, including identification of economic, legal, and natural constraints and determination of the scope and spatial relationship of functional elements;

(ii) recommending and overseeing appropriate construction project delivery systems;

(iii) consulting, investigating, and analyzing the design, form, aesthetics, materials, and construction technology used for the construction, enlargement, or alteration of a building or environs and providing expert opinion and testimony as necessary;

(iv) research to expand the knowledge base of the profession of architecture, including publishing or presenting findings in professional forums; and

(v) teaching, administering, and developing pedagogical theory in academic settings offering architectural education.

(49) [~~(48)~~] Principal--An architect who is responsible, either alone or with other architects, for an organization's Practice of Architecture.

(50) [~~(49)~~] Prototypical--From or of an architectural design intentionally created not only to establish the architectural parameters of a building or facility to be constructed but also to serve as a functional model on which future variations of the basic architectural design would be based for use in additional locations.

(51) [~~(50)~~] Public Entity--A state, a city, a county, a city and county, a district, a department or agency of state or local government which has official or quasi-official status, an agency established by state or local government though not a department thereof but subject to some governmental control, or any other political subdivision or public corporation.

(52) [~~(51)~~] Registered--Licensed.

(53) [~~(52)~~] Registrant--Architect.

(54) [~~(53)~~] Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the architectural content of the Construction Documents as a prerequisite to construction or occupation of a building or a facility.

(55) [~~(54)~~] Reinstatement--The procedure through which a cancelled, Surrendered, or revoked Texas architectural registration certificate is restored.

(56) [~~(55)~~] Renewal--The procedure through which an Architect pays a periodic fee so that the Architect's registration certificate will continue to be effective.

(57) [~~(56)~~] Responsible Charge--That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the applicable architectural standard of care.

(58) [~~(57)~~] Rules and Regulations of the Board--22 Texas Administrative Code §§1.1 et seq.

(59) [~~(58)~~] Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(60) [~~(59)~~] Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes of each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(61) [~~(60)~~] SOAH--State Office of Administrative Hearings.

(62) [~~(61)~~] State Office of Administrative Hearings (SOAH)--A Governmental Entity created to serve as an independent forum for the conduct of adjudicative hearings involving the executive branch of Texas government.

(63) [~~(62)~~] Supervision and Control--The amount of oversight by an architect overseeing the work of another whereby

(A) the architect and the individual performing the work can document frequent and detailed communication with one another and the architect has both control over and detailed professional knowledge of the work; or

(B) the architect is in Responsible Charge of the work and the individual performing the work is employed by the architect or by the architect's employer.

(64) [~~(63)~~] Supplemental Document--A document that modifies or adds to the technical architectural content of an existing Construction Document.

(65) [~~(64)~~] Surrender--The act of relinquishing a Texas architectural registration certificate along with all privileges associated with the certificate.

(66) Sustainable Design--An integrative approach to the process of design which seeks to avoid depletion of energy, water, and raw material resources; prevent environmental degradation caused by facility and infrastructure developments during their implementation and over their life cycle; and create environments that are livable and promote health, safety and well-being. Sustainability is the concept of meeting present needs without compromising the ability of future generations to meet their own needs.

(67) [~~(65)~~] TBAE--Texas Board of Architectural Examiners.

(68) [~~(66)~~] TDLR--Texas Department of Licensing and Regulation.

(69) [~~(67)~~] Texas Department of Licensing and Regulation (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(70) [~~(68)~~] Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(71) [~~(69)~~] TGSLC--Texas Guaranteed Student Loan Corporation.

(72) [~~(70)~~] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

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Cathy L. Hendricks, ASID/RID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 305-8544

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SUBCHAPTER C. EXAMINATION

22 TAC §1.41

The Texas Board of Architectural Examiners proposes an amendment to §1.41, concerning requirements for taking the Architectural Registration Examination. The proposed amendment would require applicants to enroll in the intern development program by establishing a council record at the National Council of Architectural Registration Boards (NCARB) as a prerequisite for taking the Architectural Registration Examination. The amendment makes the rule conform to a national standard to eliminate potential obstacles to reciprocal registration of Texas architects in other jurisdictions.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendment.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected

as a result of the amended rule is as follows: applicants seeking registration in Texas as architects will fulfill the prerequisites for licensure in the manner established by NCARB model law which will likely ensure that Texas architects will be registered in accordance with the standards most likely to be in effect in most jurisdictions. The registration of Texas architects in accordance with the national standard will increase the likelihood that Texas architects will obtain reciprocal registration in other jurisdictions. The amended rule will have no impact on small business or micro-business.

There will be no change in the cost to persons required to comply with the section because the proposed amendment does not create any additional requirement for taking the architectural registration examination. The proposed amendment requires applicants to enroll in the intern development program prior to taking the architectural registration examination. However, the requirement to complete the intern development program predates the proposed amendment. The amendment only affects the timing for enrolling in the intern development program.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.705(a)(2) of the Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and authority to prescribe by rule satisfactory architectural experience to apply to take the architectural registration examination.

The proposed amendment does not affect any other statutes.

§1.41. Requirements.

(a) (No change.)

(b) The Board may approve an Applicant to take the ARE only after the Applicant has completed the educational requirements for architectural registration by examination in Texas, has completed at least six (6) months of full-time experience working under the direct supervision of a licensed architect, has enrolled in the Intern Development Program by establishing a council record with NCARB, and has submitted the required application materials.

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 305-8544

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22 TAC §1.44

The Texas Board of Architectural Examiners proposes an amendment to §1.44, concerning the transfer of passing scores. The rule allows candidates for licensure in another jurisdiction to transfer passing scores on sections of the registration examination to Texas in order to seek registration in Texas instead of the other jurisdiction. The proposed amendment would impose upon candidates who transfer scores to Texas the same five-year deadline for successful completion of the examination which applies to candidates who originally seek registration in Texas. The proposed amendment applies the same deadline to all candidates to ensure equitable treatment.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no significant impact for the agency resulting from the enforcement or administration of the proposed amendment and there will be no fiscal impact for other state agencies or local government as a result of enforcing or administering the proposed amendment.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: candidates who transfer scores to Texas will have the same more lenient deadline that all other applicants have. Transfer candidates would not be required to reinitiate the application process if they do not successfully complete the entire examination within five years after initially applying as is currently required. The amendment will also benefit the public by imposing the same registration requirements upon all candidates for registration ensuring equal treatment for all similarly situated persons.

The amended rule will have no impact on small business or micro-business as the rule would apply to individual applicants for registration. Businesses do not take the examination. The rule applies only to registration candidates who initiated the registration process in another jurisdiction and later transferred their applications to Texas.

There will be no adverse fiscal impact upon persons required to comply with the amended section. The effect of the rule amendment will specify that only sections of the examination will become invalidated if the entire examination is not passed within a five-year period instead of invalidating the entire examination under the rule as it currently exists. The rule amendment will result in a positive, not adverse, fiscal impact upon persons required to comply with it.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 of the Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules to administer or enforce its enabling legislation.

The proposed amendment does not affect any other statutes.

§1.44. Transfer of Passing Scores.

(a) (No change.)

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination no later than five (5) years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within five (5) years after passing a section of the examination, the Candidate will forfeit credit for the section of the examination passed and must pass that section of the examination again [~~the five-year period, the Candidate will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the entire examination again~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy L. Hendricks, ASID/RID/IIDA
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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §§1.65 - 1.69

The Texas Board of Architectural Examiners proposes amendments to §§1.65 - 1.69, concerning certification and annual registration. The proposed amendments implement recently enacted legislative changes. The amendments to §1.65 and §1.66 implement a change in the statutes which specifies that a certificate of registration issued by the Board is cancelled two years after it expires unless renewed. Previously, a certificate of registration was cancelled one year after expiration. The amendment to §1.67 implements technical, nonsubstantive changes to §1051.357, Texas Occupations Code, and corrects an incorrect cross-reference to a statute. The amendment to §1.68 eliminates an obsolete provision which allowed architects on inactive status to use the titles "emeritus architect" and "architect emeritus" under certain circumstances. The provision predates the statute relating to emeritus status. Under the section as amended inactive architects who held an emeritus architectural registration on or before January 1, 2002, may continue to use the emeritus title. The amendment to §1.69 implements recently enacted legislation that requires each registrant to annually earn one continuing education program hour in the study of sustainable or energy-efficient design. The required hour of education is not in addition to the eight hours of continuing education each registrant must earn under the current rule. Thus, one of the required eight hours of continuing education must cover topics relating to sustainable or energy-efficient design.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect, an indeterminable positive fiscal impact may result from extending the automatic cancellation of registration from one year to two years after registration expiration. The legislative change that the rule implements will grant registrants who hold expired registration certificates a greater opportunity to renew them and return to annually paying registration renewal fees. None of the other rule amendments would have any fiscal impact on state government. None of the rule amendments will have any fiscal impact on local government.

Ms. Hendricks, has also determined that for the first five-year period the amended rules are in effect the public benefits expected as a result of the amended rules are as follows: all the amendments will make the rules generally reflect recent changes to the laws which will eliminate confusion resulting from potentially invalid rules which conflict with the law. The amendment to §1.69 will implement a legislative mandate that each registrant annually obtain education on topics relating to energy efficiency and sustainability in design to encourage designs that secure the public health, safety and economic and environmental welfare. Each amendment applies to individual registrants and implements legislative changes. The rules will have no impact on small or micro business. To the extent of any unanticipated adverse impact on small or micro business, the amendments impose the minimal impact possible while securing public health, safety and economic and environmental welfare as established by the legislature. Pursuant to the amendments, no registrant will be required to obtain an additional hour of continuing education. The mandated continuing education on energy efficiency or sustainability may be fulfilled as one of the eight hours of continuing education which each registrant must obtain each year. Furthermore, the one hour of continuing education may be obtained through self-study at no cost to the registrant. Thus, there will be no change in the cost to persons required to comply with the amended sections.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed pursuant to §1051.202 of the Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to promulgate rules. The amendments are also proposed pursuant to §§1051.357, 1051.353, and 1051.355 of the Texas Occupations Code, which require the Board to adopt rules to establish procedures relating to registration and renewal as an emeritus architect, registration renewal, and inactive registration, respectively.

The proposed amendments do not affect any other statutes.

§1.65. Annual Renewal Procedure.

(a) - (f) (No change.)

(g) If a registration is not renewed within 2 years [~~one (1) year~~] after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year [~~one-year~~] anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) - (2) (No change.)

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 [~~two (2)~~] years immediately preceding the date of the application.

§1.66. Reinstatement.

(a) - (e) (No change.)

(f) If a registration is cancelled by operation of law due to the Registrant's failure to renew the registration within 2 years [~~one (1) year~~] after its designated expiration date, the registration may not be reinstated.

§1.67. Emeritus Status.

(a) An [~~A person who previously was registered as an Architect or who is an~~] Architect whose registration is in Good Standing may apply for emeritus registration status on a form prescribed by the Board. In order for an Architect to obtain emeritus status, the Architect must demonstrate that:

(1) - (2) (No change.)

(b) An emeritus architect may [~~not~~] engage in the Practice of Architecture as defined by §1051.001(7)(D) - (H) of the Texas Occupations Code and may prepare architectural [~~except for the preparation of~~] plans and specifications for:

(1) - (2) (No change.)

(c) - (e) (No change.)

(f) In order to change [~~return~~] his/her registration to active status, an emeritus architect must:

(1) apply on a form prescribed by the Board;

(2) either submit proof that he/she has completed all continuing education requirements for each year the registration has been emeritus or, in lieu of completing the outstanding continuing education requirements, successfully complete all sections of the current Architect Registration Examination during the five years immediately preceding the return to active status; and

(3) pay a fee as prescribed by the Board.

(g) Applications to return to active status may be rejected for any of the reasons for which [~~that~~] an initial application for registration may be rejected or for which [~~that~~] a registration may be revoked.

(h) (No change.)

§1.68. Inactive Status.

(a) - (h) (No change.)

(i) An Inactive Architect may use the title "Emeritus Architect" or "Architect Emeritus" after filing the appropriate form with the board if the Inactive Architect held an emeritus architectural registration on or before January 1, 2002. [~~:~~]

[~~(1) The Inactive Architect has been actively registered as an architect in Texas or in another jurisdiction for at least twenty (20) years and has retired from the practice of Architecture; or~~]

[~~(2) the Inactive Architect held an emeritus architectural registration on or before January 1, 2002, and has retired from the practice of Architecture.~~]

(j) (No change.)

§1.69. Continuing Education Requirements.

(a) (No change.)

(b) Topics for the eight (8) CEPH shall satisfy the following requirements: All CEPH shall include the study of relevant technical and professional architectural subjects pertinent to the health, safety and welfare of the public. The study of topics related to barrier-free design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH. The study of topics related to Sustainable or Energy-Efficient design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH.

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy L. Hendricks, ASID/RID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8544

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SUBCHAPTER E. FEES

22 TAC §1.82

The Texas Board of Architectural Examiners proposes an amendment to §1.82, concerning Annual Fees. The amendment implements recently enacted legislation which requires cancellation of a registrant's certificate of registration two years after it expires. Previous law required cancellation of a certificate one year after it expired. The effect of the proposed amendment would be to bring the rule into compliance with the law and require the board to send notice of a pending cancellation within that two-year period instead of during a one-year period required in the previous law.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be an indeterminable positive fiscal impact on the agency as fewer certificates of registration will be cancelled resulting in more registrants continuing to pay an annual registration renewal fee. There is no anticipated fiscal impact on local government resulting from the proposed amendment.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: fewer registrants whose registrations have expired will lose their licenses to engage in the professions for which they were educated, trained, and in which they have obtained experience. The public will benefit from the ongoing availability of these registrants to engage in the profession as well as their contribution to the economy. The amended rule will have no adverse impact on small or micro business.

There will be no change in the cost to persons required to comply with the amended section.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.353 of the Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with general authority to promulgate rules, including rules related to the expiration of registration and which specify the cancellation of a certification of registration two years after it expires.

The proposed amendment does not affect any other statutes.

§1.82. Annual Fees.

(a) - (b) (No change.)

(c) If a Registrant fails to renew his/her certificate of registration within 2 years [~~one year~~] after its designated expiration date, the certificate of registration shall be cancelled by operation of law without the opportunity for a formal hearing. The Board shall send a notice of pending cancellation to a Registrant who fails to renew his/her certificate of registration within 2 years [~~one year~~] after its designated expi-

ration date. The notice shall be sent to the Registrant's current address of record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy L. Hendricks, ASID/RID/IIDA
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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

The Texas Board of Architectural Examiners proposes an amendment to §3.5, concerning terms defined within the rules. The amendments define the terms "energy-efficient design" and "sustainable design" for purposes of another proposed amendment which implements new law which will require registrants to complete continuing education on energy efficiency and sustainable design. The proposed amendment also make technical changes to the definition of the term "emeritus landscape architect" to include a cross-reference to a new statute creating explicit statutory emeritus registration status for landscape architects. The effect of the proposed amendments would be to give guidance to registrants in fulfilling continuing education requirements and obtaining emeritus status.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal impact upon state or local government.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: to provide clarification and guidance to registrants who are fulfilling the legislative mandate of obtaining education on energy efficiency. Without clarification, registrants may attend continuing education programs that do not cover subjects the legislature intended to be covered. The amended rule will have no impact on small or micro businesses as regulated entities. The Board sought to define terms broadly enough to cover all continuing education programs which fulfilled the legislative intent that Board registrants obtain continuing education on designs that minimize the depletion of natural resources. To the extent of any unanticipated adverse impact upon small or micro business, the Board's proposed definitions secure the health, safety, and environmental and economic welfare of the state as expressed by the Legislature while imposing the minimal adverse impact upon small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 of the Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules and §1051.356 of the Texas Occupations Code, which requires the Board to adopt rules requiring registrants to obtain annual education on sustainable or energy-efficient design standards.

The proposed amendment does not affect any other statutes.

§3.5. Terms Defined Herein.

The following words, terms, and acronyms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (21) (No change.)

(22) Emeritus Landscape Architect (or Landscape Architect Emeritus)--An honorary title that may be used by a [~~an Inactive~~] Landscape Architect who has retired from the practice of Landscape Architecture in Texas pursuant to §1052.155 of the Texas Occupations Code.

(23) Energy-Efficient Design--The design of a project and the specification of materials to minimize the consumption of energy in the use of the project. The term includes energy efficiency strategies by design as well as the incorporation of alternative energy systems.

(24) [~~(23)~~] Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed landscape architectural project from a technical landscape architectural standpoint.

(25) [~~(24)~~] Good Standing--

(A) a registration status signifying that a Landscape Architect is not delinquent in the payment of any fees owed to the Board or

(B) an application status signifying that an Applicant or Candidate is not delinquent in the payment of any fees owed to the Board, is not the subject of a pending TBAE enforcement proceeding, and has not been the subject of formal disciplinary action by a landscape architectural registration board that would provide a ground for the denial of the application for landscape architectural registration in Texas.

(26) [~~(25)~~] Governmental Entity--A Texas state agency or department; a district, authority, county, municipality, or other political subdivision of Texas; or a publicly owned Texas utility.

(27) [~~(26)~~] Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

(28) [~~(27)~~] Inactive--A registration status signifying that a Landscape Architect may not practice Landscape Architecture in the State of Texas.

(29) [~~(28)~~] LAAB--Landscape Architectural Accreditation Board.

(30) [~~(29)~~] Landscape Architect--An individual who holds a valid Texas landscape architectural registration certificate granted by the Board.

(31) [~~(30)~~] Landscape Architect Registration Examination (LARE)--The standardized test that a Candidate must pass in order to obtain a valid Texas landscape architectural registration certificate.

(32) [~~(31)~~] Landscape Architects' Registration Law--Article 249c, Vernon's Texas Civil Statutes, and Chapter 1052, Texas Occupations Code.

(33) [~~(32)~~] Landscape Architectural Accreditation Board (LAAB)--An agency that accredits landscape architectural degree programs in the United States.

(34) [~~(33)~~] Landscape Architectural Intern--An individual participating in an internship to complete the experiential requirements for landscape architectural registration in Texas.

(35) [~~(34)~~] Landscape Architecture--The art and science of landscape analysis, landscape planning, and landscape design, including the performance of professional services such as consultation, investigation, research, the preparation of general development and detailed site design plans, the preparation of studies, the preparation of specifications, and responsible supervision related to the development of landscape areas for:

(A) the planning, preservation, enhancement, and arrangement of land forms, natural systems, features, and plantings, including ground and water forms;

(B) the planning and design of vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements;

(C) the formulation of graphic and written criteria to govern the planning and design of landscape construction development programs, including:

(i) the preparation, review, and analysis of master and site plans for landscape use and development;

(ii) the analysis of environmental, physical, and social considerations related to land use;

(iii) the preparation of drawings, construction documents, and specifications; and

(iv) construction observation;

(D) design coordination and review of technical submissions, plans, and construction documents prepared by individuals working under the direction of the Landscape Architect;

(E) the preparation of feasibility studies, statements of probable construction costs, and reports and site selection for landscape development and preservation;

(F) the integration, site analysis, and determination of the location of buildings, structures, and circulation and environmental systems;

(G) the analysis and design of:

(i) site landscape grading and drainage;

(ii) systems for landscape erosion and sediment control; and

(iii) pedestrian walkway systems;

(H) the planning and placement of uninhabitable landscape structures, plants, landscape lighting, and hard surface areas;

(I) the collaboration of Landscape Architects with other professionals in the design of roads, bridges, and structures regarding the functional, environmental, and aesthetic requirements of the areas in which they are to be placed; and

(J) field observation of landscape site construction, revegetation, and maintenance.

(36) [~~(35)~~] LARE--Landscape Architect Registration Examination.

(37) [~~(36)~~] Licensed--Registered.

(38) [~~(37)~~] Member Board--A landscape architectural registration board that is part of CLARB.

(39) [~~(38)~~] Nonregistrant--An individual who is not a Landscape Architect.

(40) [~~(39)~~] Principal-A Landscape Architect who is responsible, either alone or with other Landscape Architects, for an organization's practice of Landscape Architecture.

(41) [~~(40)~~] Prototypical--From or of a landscape architectural design intentionally created not only to establish the landscape architectural parameters of a project but also to serve as a functional model on which future variations of the basic landscape architectural design would be based for use in additional locations.

(42) [~~(41)~~] Registrant--Landscape Architect.

(43) [~~(42)~~] Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the landscape architectural content of the Construction Documents as a prerequisite to construction of a project.

(44) [~~(43)~~] Reinstatement--The procedure through which a cancelled, Surrendered, or revoked Texas landscape architectural registration certificate is restored.

(45) [~~(44)~~] Renewal--The procedure through which a Landscape Architect pays a periodic fee so that the Landscape Architect's registration certificate will continue to be effective.

(46) [~~(45)~~] Responsible charge--That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered landscape architects applying the applicable landscape architectural standard of care.

(47) [~~(46)~~] Rules and Regulations of the Board--22 Texas Administrative Code §§3.1 et seq.

(48) [~~(47)~~] Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(49) [~~(48)~~] Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes of each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(50) [~~(49)~~] SOAH--State Office of Administrative Hearings.

(51) [~~(50)~~] State Office of Administrative Hearings (SOAH)--A Governmental Entity created to serve as an independent forum for the conduct of adjudicative hearings involving the executive branch of Texas government.

(52) [~~(51)~~] Supervision and Control--The amount of oversight by a landscape architect overseeing the work of another whereby

(A) the landscape architect and the individual performing the work can document frequent and detailed communication with one another and the landscape architect has both control over and detailed professional knowledge of the work; or

(B) the landscape architect is in Responsible Charge of the work and the individual performing the work is employed by the landscape architect or by the landscape architect's employer.

(53) [~~(52)~~] Supplemental Document--A document that modifies or adds to the technical landscape architectural content of an existing Construction Document.

(54) [~~(53)~~] Surrender--The act of relinquishing a Texas landscape architectural registration certificate along with all privileges associated with the certificate.

(55) Sustainable Design--An integrative approach to the process of design which seeks to avoid depletion of energy, water, and raw material resources; prevent environmental degradation caused by facility and infrastructure development during their implementation and over their life cycle; and create environments that are livable and promote health, safety and well-being. Sustainability is the concept of meeting present needs without compromising the ability of future generations to meet their own needs.

(56) [~~(54)~~] Table of Equivalents for Experience in Landscape Architecture--22 Texas Administrative Code §§3.191 and 3.192 (Sections 3.191 and 3.192 of this Chapter).

(57) [~~(55)~~] TBAE--Texas Board of Architectural Examiners.

(58) [~~(56)~~] TDLR--Texas Department of Licensing and Regulation.

(59) [~~(57)~~] Texas Department of Licensing and Regulation (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(60) [~~(58)~~] Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(61) [~~(59)~~] TGSLC--Texas Guaranteed Student Loan Corporation.

(62) [~~(60)~~] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy L. Hendricks, ASID/RID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8544

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SUBCHAPTER C. EXAMINATION

22 TAC §3.44

The Texas Board of Architectural Examiners proposes an amendment to §3.44, concerning transfer of passing scores. The rule allows candidates for licensure in another jurisdiction to transfer passing scores on sections of the registration examination to Texas in order to seek registration in Texas instead of the other jurisdiction. The proposed amendment would impose upon candidates who transfer scores to Texas the same five-year deadline for successful completion of the examination which applies to candidates who originally seek registration in Texas. The proposed amendment applies the same deadline to all candidates to ensure equitable treatment.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no significant fiscal impact for the agency resulting from the enforcement or administration of the proposed amendment and there will be no fiscal impact for other state agencies or local government as a result of enforcing or administering the proposed amendment.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: transfer candidates would not be required to reinitiate the application process if they do not successfully complete the entire examination within five years after initially applying as is currently required. The amendment will also benefit the public by imposing the same registration requirements upon all candidates for registration ensuring equal treatment for all similarly situated persons. The amended rule will have no impact on small business or micro-business as the rule would apply to individual applicants for registration. The amended rule applies only to registration candidates who initiated the registration process in another jurisdiction and later transferred their applications to Texas.

There will be no adverse fiscal impact upon persons required to comply with the amended section. The effect of the rule amendment will specify that only sections of the examination will become invalidated if the entire examination is not passed within a five-year period instead of invalidating the entire examination five years after the application is filed under the rule as it currently exists.

The rule amendment will result in a positive, not adverse, fiscal impact upon persons required to comply with it.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 of the Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules to administer or enforce its enabling legislation.

The proposed amendment does not affect any other statutes.

§3.44. Transfer of Passing Scores.

(a) (No change.)

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination no later than five (5) years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within five (5) years after passing a section of the examination, the Candidate will forfeit credit for the section of the examination passed and must pass that section of the examination again [~~the five-year period, the Candidate will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the entire examination again~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §§3.65 - 3.69

The Texas Board of Architectural Examiners proposes amendments to §§3.65 - 3.69, concerning certification and annual registration. The proposed amendments implement recently enacted legislative changes. The amendments to §3.65 and §3.66 implement a change in the statutes which specifies that a certificate of registration issued by the Board is cancelled two years after it expires unless renewed. Previously, a certificate of registration was cancelled one year after expiration. The proposed new version of §3.67 implements §1052.155 of the Texas Occupations Code, which requires the Board to adopt by rule a procedure for qualified landscape architects to register as emeritus landscape architects. The amendment to §3.68 eliminates an obsolete provision which allowed landscape architects on inactive status to use the titles "emeritus landscape architect" and "landscape architect emeritus" under certain circumstances. The provision predates the statute which creates the emeritus status and specifies the process for obtaining emeritus status. Under the section as amended inactive landscape architects who held an emeritus registration on or before January 1, 2002, may continue to use the emeritus title. The amendment to §3.69 implements recently enacted legislation which requires each registrant to annually earn one continuing education program hour in the study of sustainable or energy-efficient design. The required hour of education is not in addition to the eight hours of continuing education each registrant must earn. Thus, one of the required eight hours of continuing education must cover topics relating to sustainable or energy-efficient design.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect, an indeterminable positive fiscal impact may result from extending the automatic cancellation of registration from one year to two years after registration expiration. The legislative change that the rule implements will grant registrants who hold expired registration certificates a greater opportunity to renew them and return to annually paying registration renewal fees. The proposed new version of §3.67 which creates the emeritus landscape architect registration status will not have a fiscal impact upon the agency because registrants who are qualified for emeritus status would otherwise change their registrations to inactive status or allow them to expire. None of the other rule amendments would have any fiscal impact on state government. None of the rule amendments will have any fiscal impact on local government.

Ms. Hendricks, has also determined that for the first five-year period the amended rules are in effect the public benefits expected as a result of the amended rules are as follows: all the amendments will make the rules generally reflect recent changes to the laws which will eliminate confusion resulting from potentially invalid rules which conflict with the laws. The adoption of amended §3.67 will implement a formal, statutorily mandated process for qualified landscape architects to obtain emeritus registration status. The amendment to §3.69 will fulfill the legislative mandate that each registrant annually obtain education on topics relating to energy efficiency and sustainability in design to encourage designs that secure the public health, safety and economic and environmental welfare. Each amendment applies to individual registrants and not businesses. The amended rules will have no impact on small or micro business. To the extent of any unanticipated adverse impact on small or micro business, the amendments impose the minimal impact possible while securing public health, safety and economic and environmental welfare as established by the legislature. Pursuant to the amendments, no registrant will be required to obtain an additional hour of continuing education. The mandated continuing education on energy efficiency or sustainability may be fulfilled as one of the eight hours of continuing education which each registrant must obtain each year. Furthermore, the one hour of continuing education may be obtained through self-study at no cost to the registrant. Thus, there will be no change in the cost to persons required to comply with the amended sections.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed pursuant to §1051.202 of the Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to promulgate rules. The amendments are also proposed pursuant to §§1052.155, 1051.353, and 1051.355 of the Texas Occupations Code, which require the Board to adopt rules to establish procedures relating to registration and renewal as an emeritus landscape architect, registration renewal, and inactive registration, respectively.

The proposed amendments do not affect any other statutes.

§3.65. Annual Renewal Procedure.

(a) - (e) (No change.)

(f) If a registration is not renewed within 2 years [~~one (1) year~~] after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year [~~one-year~~] anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to Section 3.21, including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 3.22, including the successful completion of the registration examination; or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 [~~two (2)~~] years immediately preceding the date of the application.

(g) (No change.)

§3.66. Reinstatement.

(a) - (e) (No change.)

(f) If a registration is cancelled by operation of law due to the Registrant's failure to renew the registration within 2 years [~~one (1) year~~] after its designated expiration date, the registration may not be reinstated.

§3.67. Emeritus Status.

(a) A Landscape Architect whose registration is in Good Standing may apply for emeritus registration status on a form prescribed by the Board. In order for a Landscape Architect to obtain emeritus status, the Landscape Architect must demonstrate that: [~~Effective January 1, 2002, a Landscape Architect may not renew an emeritus landscape architectural registration. Every Landscape Architect who holds an emeritus registration on January 1, 2002, must change to active or inactive status on or before the Landscape Architect's next registration expiration date in order to continue to hold a valid landscape architectural registration. The status change fee will be waived for each emeritus Landscape Architect who changes to active or inactive status~~]

(1) he/she has been registered as a Landscape Architect for at least 20 years; and

(2) he/she is at least 65 years of age.

(b) An Emeritus Landscape Architect may engage in the Practice of Landscape Architecture to the extent that a person who does not hold a certificate of registration as a landscape architect may under §1052.003(a) of the Texas Occupations Code.

(c) An Emeritus Landscape Architect may use the title "Emeritus Landscape Architect" or "Landscape Architect Emeritus."

(d) An Emeritus Landscape Architect may renew his/her registration prior to its specified expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the registration renewal notice and signing the renewal form to verify the accuracy of all information and documentation provided.

(e) If an Emeritus Landscape Architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Emeritus Landscape Architect's registration, the Board shall impose a late payment penalty that must be paid before the Emeritus Landscape Architect's registration may be renewed.

(f) In order to change his/her registration to active status, an Emeritus Landscape Architect must:

(1) apply on a form prescribed by the Board;

(2) either submit proof that he/she has completed all continuing education requirements for each year the registration has been emeritus or, in lieu of completing the outstanding continuing education requirements, successfully complete all sections of the current Landscape Architect Registration Examination during the five years immediately preceding the return to active status; and

(3) pay a fee as prescribed by the Board.

(g) Applications to return to active status may be rejected for any of the reasons for which an initial application for registration may be rejected or for which a registration may be revoked.

(h) The Board may require that an application to return to active status include verification that the Applicant has complied with the laws governing the Practice of Landscape Architecture.

§3.68. Inactive Status.

(a) - (h) (No change.)

(i) An Inactive Landscape Architect may use the title "Emeritus Landscape Architect" or " Landscape Architect Emeritus" after filing the appropriate form with the board if the Inactive Landscape Architect held an emeritus Landscape architectural registration on or before January 1, 2002. [~~:~~]

[~~(1) The Inactive Landscape Architect has been actively registered as a landscape architect in Texas or in another jurisdiction for at least twenty (20) years and has retired from the practice of Landscape Architecture; or~~]

[~~(2) the Inactive Landscape Architect held an emeritus landscape architectural registration on or before January 1, 2002, and has retired from the practice of Landscape Architecture.~~]

(j) (No change.)

§3.69. Continuing Education Requirements.

(a) (No change.)

(b) Topics for the eight (8) CEPH shall satisfy the following requirements: All CEPH shall include the study of relevant technical and professional landscape architectural subjects pertinent to the health, safety and welfare of the public. The study of topics related to barrier-free design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH. The study of topics related to Sustainable or Energy-Efficient design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH.

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy L. Hendricks, ASID/RID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8544

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SUBCHAPTER E. FEES

22 TAC §3.82

The Texas Board of Architectural Examiners proposes an amendment to §3.82, concerning to Annual Fees. The amendment implements recently enacted legislation which requires cancellation of a registrant's certificate of registration two years after it expires. Previous law required cancellation of a certificate one year after it expired. The effect of the proposed amendment would be to bring the rule into compliance with the law and require the board to send notice of a pending cancellation within that two-year period instead of during a one-year period required in the previous law.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there may be an indeterminable positive fiscal impact on the agency as fewer certificates of registration will be cancelled resulting in more registrants continuing to pay an annual registration renewal fee. There is no anticipated

fiscal impact on local government resulting from the proposed amendment.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: the rule will be in compliance with the law thus eliminating confusion resulting from a potentially invalid rule which conflicts with the law. The public will benefit from the ongoing availability of these registrants to engage in the profession as well as their contribution to the economy. The amended rule will have no adverse impact on small business. There will be no change in the cost to persons required to comply with the amended section.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.353 of the Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with general authority to promulgate rules, including rules related to the expiration of registration and which specify the cancellation of a certification of registration two years after it expires.

The proposed amendment does not affect any other statutes.

§3.82. Annual Fees.

(a) - (b) (No change.)

(c) If a Registrant fails to renew his/her certificate of registration within 2 years [~~one~~ ~~year~~] after its designated expiration date, the certificate of registration shall be cancelled by operation of law without the opportunity for a formal hearing. The Board shall send a notice of pending cancellation to a Registrant who fails to renew his/her certificate of registration within 2 years [~~one~~ ~~year~~] after its designated expiration date. The notice shall be sent to the Registrant's current address of record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy L. Hendricks, ASID/RID/IIDA
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For further information, please call: (512) 305-8544

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

The Texas Board of Architectural Examiners proposes an amendment to §5.5, concerning terms defined within the rules. The amendment defines the terms "energy-efficient design" and "sustainable design" for purposes of another proposed amendment which implements new law which will require registrants to complete continuing education on energy efficiency and sustainable design. The proposed amendment also make technical changes to the definition of the term "emeritus interior designer" to include a cross-reference to a new statute creating explicit statutory emeritus registration status for interior designers. The effect of the proposed amendment would be to give guidance to registrants in fulfilling continuing education requirements and obtaining emeritus status.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal impact upon state or local government.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: to provide clarification and guidance to registrants who are fulfilling the legislative mandate of obtaining education on energy efficiency and sustainability. Without clarification registrants may attend continuing education programs that do not cover subjects the legislature intended to be covered. The amended rule will have no impact on small or micro businesses as regulated entities. The Board sought to define terms broadly enough to cover all continuing education programs which fulfilled the legislative intent that Board registrants obtain continuing education on designs that minimize the depletion of natural resources. To the extent of any unanticipated adverse impact upon small or micro business, the Board's proposed definitions secure the health, safety, and environmental and economic welfare of the state as expressed by the Legislature while imposing the minimal adverse impact upon small business. There will be no change in the cost to persons required to comply with the amended section.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 of the Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules and §1051.356 of the Texas Occupations Code, which requires the Board to adopt rules requiring registrants to obtain annual education on sustainable or energy-efficient design standards.

The proposed amendment does not affect any other statutes.

§5.5. Terms Defined Herein.

The following words, terms, and acronyms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (19) (No change.)

(20) Emeritus Interior Designer (or Interior Designer Emeritus)--An honorary title that may be used by an [~~Inactive~~] Interior Designer who has retired from the practice of Interior Design in Texas pursuant to §1053.156 of the Texas Occupations Code.

(21) Energy-Efficient Design--The design of a project and the specification of materials to minimize the consumption of energy in the use of the project. The term includes energy efficiency strategies by design as well as the incorporation of alternative energy systems.

(22) [~~(21)~~] Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed interior design project from a technical interior design standpoint.

(23) [~~(22)~~] FIDER--Foundation for Interior Design Education Research.

(24) [~~(23)~~] Foundation for Interior Design Education Research (FIDER)--An agency that sets standards for postsecondary interior design education and evaluates college and university interior design programs.

(25) [~~(24)~~] Good Standing--

(A) a registration status signifying that an Interior Designer is not delinquent in the payment of any fees owed to the Board or

(B) an application status signifying that an Applicant or Candidate is not delinquent in the payment of any fees owed to the Board, is not the subject of a pending TBAE enforcement proceeding, and has not been the subject of formal disciplinary action by an interior design registration board that would provide a ground for the denial of the application for interior design registration in Texas.

(26) [~~(25)~~] Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

(27) [~~(26)~~] Inactive--A registration status signifying that an Interior Designer may not practice Interior Design in the State of Texas.

(28) [~~(27)~~] Interior Design--The identification, research, or development of creative solutions to problems relating to the function or quality of the interior environment; the performance of services relating to interior spaces, including programming, design analysis, space planning of non-load-bearing interior construction, and application of aesthetic principles, by using specialized knowledge of interior construction, building codes, equipment, materials, or furnishings; or the preparation of interior design plans, specifications, or related documents about the design of non-load-bearing interior spaces.

(29) [~~(28)~~] Interior Designer--An individual who holds a valid Texas interior design registration certificate granted by the Board.

(30) [~~(29)~~] Interior Designers' Registration Law--Article 249e, Vernon's Texas Civil Statutes, and Chapter 1053, Texas Occupations Code.

(31) [~~(30)~~] Interior Design Intern--An individual participating in an internship to complete the experiential requirements for interior design registration by examination in Texas.

(32) [~~(31)~~] Licensed--Registered.

(33) [~~(32)~~] Member Board--An interior design registration board that is part of NCIDQ.

(34) [~~(33)~~] National Council for Interior Design Qualification (NCIDQ)--A nonprofit organization of state and provincial interior design regulatory agencies and national organizations whose membership is made up in total or in part of interior designers.

(35) [~~(34)~~] NCIDQ--National Council for Interior Design Qualification.

(36) [~~(35)~~] Nonregistrant--An individual who is not an Interior Designer.

(37) [~~(36)~~] Principal-An Interior Designer who is responsible, either alone or with other Interior Designers, for an organization's practice of Interior Design.

(38) [~~(37)~~] Registrant--Interior Designer.

(39) [~~(38)~~] Regulatory Approval--The approval of Construction Documents by a Governmental Entity after a review of the Interior Design content of the Construction Documents as a prerequisite to construction or occupation of a building or facility.

(40) [~~(39)~~] Reinstatement--The procedure through which a cancelled, Surrendered, or revoked Texas interior design registration certificate is restored.

(41) [~~(40)~~] Renewal--The procedure through which an Interior Designer pays a periodic fee so that the Interior Designer's registration certificate will continue to be effective.

(42) [~~(41)~~] Responsible Charge--That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered interior designers applying the applicable interior design standard of care.

(43) [~~(42)~~] Rules and Regulations of the Board--22 Texas Administrative Code §§5.1 et seq.

(44) [~~(43)~~] Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(45) [~~(44)~~] Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes from each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(46) [~~(45)~~] SOAH--State Office of Administrative Hearings.

(47) [~~(46)~~] State Office of Administrative Hearings (SOAH)--A Governmental Entity created to serve as an independent forum for the conduct of adjudicative hearings involving the executive branch of Texas government.

(48) [~~(47)~~] Supervision and Control--The amount of oversight by an interior designer overseeing the work of another whereby

(A) the interior designer and the individual performing the work can document frequent and detailed communication with one another and the interior designer has both control over and detailed professional knowledge of the work; or

(B) the interior designer is in Responsible Charge of the work and the individual performing the work is employed by the interior designer or by the interior designer's employer.

(49) [~~(48)~~] Supplemental Document--A document that modifies or adds to the technical interior design content of an existing Construction Document.

(50) [~~(49)~~] Surrender--The act of relinquishing a Texas interior design registration certificate along with all privileges associated with the certificate.

(51) Sustainable Design--An integrative approach to the process of design which seeks to avoid depletion of energy, water, and raw material resources; prevent environmental degradation caused by facility and infrastructure development during their implementation and over their life cycle; and create environments that are livable and promote health, safety and well-being. Sustainability is the concept of meeting present needs without compromising the ability of future generations to meet their own needs.

(52) [~~(50)~~] Table of Equivalents for Education and Experience in Interior Design--22 Texas Administrative Code §§5.201 et seq. (Sections 5.201 - 5.203 of this Chapter).

(53) [~~(51)~~] TBAE--Texas Board of Architectural Examiners.

(54) [~~(52)~~] TDLR--Texas Department of Licensing and Regulation.

(55) [~~(53)~~] Texas Department of Licensing and Regulation (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(56) [~~(54)~~] Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(57) [~~(55)~~] TGSLC--Texas Guaranteed Student Loan Corporation.

(58) [~~(56)~~] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy L. Hendricks, ASID/RID/IIDA
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SUBCHAPTER C. EXAMINATION

22 TAC §5.54

The Texas Board of Architectural Examiners proposes an amendment to §5.54, concerning the transfer of passing scores. The rule allows candidates for licensure in another jurisdiction to transfer passing scores on sections of the registration examination to Texas in order to seek registration in Texas instead of the other jurisdiction. The proposed amendment would impose upon candidates who transfer scores to Texas the same five-year deadline for successful completion of the examination which applies to candidates who originally seek registration in Texas. The proposed amendment applies the same deadline to all candidates to ensure equitable treatment.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no significant impact for the agency resulting from the enforcement or administration of the proposed amendment and there will be no fiscal impact for other state agencies or local government as a result of enforcing or administering the proposed amendment.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: transfer candidates would not be required to reinitiate the application process if they do not successfully complete the entire examination within five years after initially applying as is currently required. The amendment will also benefit the public by imposing the same registration requirements upon all candidates for registration ensuring equal treatment for all similarly situated persons. The amended rule will have no impact on small business or micro-business as the rule would apply to individual applicants for registration. The amended rule applies only to registration candidates who initiated the registration process in another jurisdiction and later transferred their applications to Texas.

There will be no adverse fiscal impact upon persons required to comply with the amended section. The effect of the rule amendment will specify that only sections of the examination will become invalidated if the entire examination is not passed within a five-year period instead of invalidating the entire examination five years after the application is filed under the rule as it currently exists. The rule amendment will result in a positive, not adverse, fiscal impact upon persons required to comply with it.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 of the Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules to administer or enforce its enabling legislation.

The proposed amendment does not affect any other statutes.

§5.54. Transfer of Passing Scores.

(a) (No change.)

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination no later than five (5) years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within five (5) years after passing a section of the examination, the Candidate will forfeit credit for the section of the examination passed and must pass that section of the examination again [~~the five-year period, the Candidate will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the entire examination again~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §§5.75 - 5.79

The Texas Board of Architectural Examiners proposes amendments to §§5.75 - 5.79, concerning certification and annual registration. The proposed amendments implement recently enacted legislative changes. The amendments to §5.75 and §5.76 implement a change in the statutes which specifies that a certificate of registration issued by the Board is cancelled two years after it expires unless renewed. Previously, a certificate of registration was cancelled one year after expiration. Proposed amendments to §5.77 implement §1053.156 of the Texas Occupations

Code, which requires the Board to adopt by rule a procedure for qualified interior designers to register as emeritus interior designers. The amendment to §5.78 eliminates an obsolete provision which allowed interior designers on inactive status to use the titles "emeritus interior designer" and "interior designer emeritus" under certain circumstances. The provision predates the statute which creates the emeritus status and specifies the process for obtaining emeritus status. Under the section as amended inactive interior designers who held an emeritus registration on or before January 1, 2002, may continue to use the emeritus title. The amendment to §5.79 implements recently enacted legislation that requires each registrant of the agency to annually earn one continuing education program hour in the study of sustainable or energy-efficient design. The required hour of education is not in addition to the eight hours of continuing education each registrant must earn. Thus, one of the required eight hours of continuing education must cover topics relating to sustainable or energy-efficient design.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect, an indeterminable positive fiscal impact may result from extending the automatic cancellation of registration from one year to two years after registration expiration. The legislative change that the rule implements will grant registrants who hold expired registration certificates a greater opportunity to renew them and return to annually paying registration renewal fees. The proposed revision of §5.77 which adopts a procedure for interior designers to register as emeritus will not have a fiscal impact on the agency because registrants who qualify for emeritus status would otherwise change their registrations to inactive status or allow their registrations to expire. None of the other rule amendments would have any fiscal impact on state government. None of the rule amendments will have any fiscal impact on local government.

Ms. Hendricks, has also determined that for the first five-year period the amended rules are in effect the public benefits expected as a result of the amended rules are as follows: all the amendments will make the rules generally reflect recent changes to the laws which will eliminate confusion resulting from conflicts between the laws and rules. The new version of §5.77 will implement a formal, statutorily mandated process for qualified interior designers to obtain emeritus status. The amendment to §5.79 will fulfill the legislative mandate that each registrant annually obtain education on topics relating to energy efficiency and sustainability in design to encourage designs that secure the public health, safety and economic and environmental welfare. Each amendment applies to individual registrants. The amended rules will have no impact on small or micro business. To the extent of any unanticipated adverse impact on small or micro business, the amendment imposes the minimal impact possible while securing public health, safety and economic and environmental welfare as established by the legislature. Pursuant to the amendments, no registrant will be required to obtain an additional hour of continuing education. The mandated continuing education on energy efficiency or sustainability may be fulfilled as one of the eight hours of continuing education which each registrant must obtain each year. Furthermore, the one hour of continuing education may be obtained through self-study at no cost to the registrant. Thus, there will be no change in the cost to persons required to comply with the amended sections.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed pursuant to §1051.202 of Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to promulgate rules. The amendments are also proposed pursuant to §§1053.156, 1051.353, and 1051.355 of the Texas Occupations Code, which require the Board to adopt rules to establish procedures relating to registration and renewal as an emeritus interior designer, registration renewal, and inactive registration, respectively.

The proposed amendments do not affect any other statutes.

§5.75. Annual Renewal Procedure.

(a) - (e) (No change.)

(f) If a registration is not renewed within two (2) years [~~one (1) year~~] after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year [~~one-year~~] anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) - (2) (No change.)

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 [~~two (2)~~] years immediately preceding the date of the application.

(g) (No change.)

§5.76. Reinstatement.

(a) - (e) (No change.)

(f) If a registration is cancelled by operation of law due to the Registrant's failure to renew the registration within 2 years [~~one (1) year~~] after its designated expiration date, the registration may not be reinstated.

§5.77. Emeritus Status.

(a) An Interior Designer whose registration is in Good Standing may apply for emeritus registration status on a form prescribed by the Board. In order for an Interior Designer to obtain emeritus status, the Interior Designer must demonstrate that: [~~Effective January 1, 2002, an Interior Designer may not renew an emeritus interior design registration. Every Interior Designer who holds an emeritus registration on January 1, 2002, must change to active or inactive status on or before the Interior Designer's next registration expiration date in order to continue to hold a valid interior design registration. The status change fee will be waived for each emeritus Interior Designer who changes to active or inactive status.~~]

(1) he/she has been registered as an Interior Designer for at least 20 years; and

(2) he/she is at least 65 years of age.

(b) A Emeritus Interior Designer may use the title "Emeritus Interior Designer" or "Interior Designer Emeritus."

(c) An Emeritus Interior Designer may renew his/her registration prior to its specified expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the registration renewal notice and signing the renewal form to verify the accuracy of all information and documentation provided.

(d) If an Emeritus Interior Designer fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Emeritus Interior Designer's registration, the Board shall impose a late payment penalty that must be paid before the Emeritus Interior Designer's registration may be renewed.

(e) In order to change his/her registration to active status, an Emeritus Interior Designer must:

(1) apply on a form prescribed by the Board;

(2) either submit proof that he/she has completed all continuing education requirements for each year the registration has been emeritus or, in lieu of completing the outstanding continuing education requirements, successfully complete all sections of the current Interior Designer Registration Examination during the five years immediately preceding the return to active status; and

(3) pay a fee as prescribed by the Board.

(f) Applications to return to active status may be rejected for any of the reasons for which an initial application for registration may be rejected or for which a registration may be revoked.

(g) The Board may require that an application to return to active status include verification that the Applicant has complied with the laws governing the Practice of Interior Design.

§5.78. Inactive Status.

(a) - (h) (No change.)

(i) An Inactive Interior Designer may use the title "Emeritus Interior Designer" or "Interior Designer Emeritus" after filing the appropriate form with the Board if the Inactive Interior Designer held an emeritus interior design registration on or before January 2, 2002.[:]

[(1) The Inactive Interior Designer has been actively registered as an interior designer in Texas or in another jurisdiction for at least ten (10) years and has retired from the practice of Interior Design; or]

[(2) the Inactive Interior Designer held an emeritus interior design registration on or before January 2, 2002, and has retired from the practice of Interior Design.]

(j) - (k) (No change.)

§5.79. Continuing Education Requirements.

(a) (No change.)

(b) Topics for the eight (8) CEPH shall satisfy the following requirements: All CEPH shall include the study of relevant technical and professional interior design subjects pertinent to the health, safety and welfare of the public. The study of topics related to barrier-free design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH. The study of topics related to Sustainable or Energy-Efficient design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH.

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706069
Cathy L. Hendricks, ASID/RID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 305-8544

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SUBCHAPTER E. FEES

22 TAC §5.92

The Texas Board of Architectural Examiners proposes an amendment to §5.92, concerning Annual Fees. The amendment implements recently enacted legislation which requires cancellation of a registrant's certificate of registration two years after it expires. Previous law required cancellation of a certificate one year after it expired. The effect of the proposed amendment would be to bring the rule into compliance with the law and require the board to send notice of a pending cancellation within that two-year period instead of during a one-year period required in the previous law.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there may be an indeterminable positive fiscal impact on the agency as fewer certificates of registration will be cancelled resulting in more registrants continuing to pay an annual registration renewal fee. There is no anticipated fiscal impact on local government resulting from the proposed amendment.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: fewer registrants whose registrations have expired will lose their licenses to engage in the professions for which they were educated, trained, and in which they have obtained experience. The public will benefit from the ongoing availability of these registrants to engage in the profession as well as their contribution to the economy. The amended rule will have no adverse impact on small or micro business.

There will be no change in the cost to persons required to comply with the amended section.

Comments may be submitted to Cathy L. Hendricks, ASID/RID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.353 of the Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with general authority to promulgate rules, including rules related to the expiration of registration and which specify the cancellation of a certification of registration two years after it expires.

The proposed amendment does not affect any other statutes.

§5.92. Annual Fees.

(a) - (b) (No change.)

(c) If a Registrant fails to renew his/her certificate of registration within 2 years [one year] after its designated expiration date, the certificate of registration shall be cancelled by operation of law without the opportunity for a formal hearing. The Board shall send a notice of pending cancellation to a Registrant who fails to renew his/her certificate of registration within 2 years [one year] after its designated expi-

ration date. The notice shall be sent to the Registrant's current address of record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

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Cathy L. Hendricks, ASID/RID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 305-8544

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG
SUBCHAPTER K. TEXAS FOOD ESTABLISHMENTS

25 TAC §§229.172, 229.176 - 229.178

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §229.172, §229.176, and §229.177 concerning the accreditation of certified food management programs and the certification of food managers, and new §229.178 concerning the accreditation of food handler programs.

BACKGROUND AND PURPOSE

The purpose of the amendments to §229.172, and §229.176 is to allow the issuance of the five-year certified food manager certificate in accordance with House Bill 1064 of the 80th Legislature that exempts the food manager certificate from the two year renewal required by Health and Safety Code, §12.0112, and certificate fees are amended to reflect the five-year renewal period.

The purpose of the amendment to §229.177 is to reflect the agency name change to the Department of State Health Services and correct a rule reference. The purpose of the new §229.178 is to define the basic food safety training or education required to be included in a department accredited food handler course curriculum.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 229.172, 229.176, and 229.177 have been reviewed and the department has determined that reasons for adopting these sections continue to exist because rules on these subjects are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §229.172 concerns the accreditation of food management programs, to authorize issuance of five-year Certified Food Manager certificates. The recertification examination is amended to be consistent with §229.176, which establishes a 75-question examination for recertification. The amendment to §229.176 concerns the certification of food managers to authorize issuance of five-year Certified Food Manager certificates. Additional amendments are for consistency with the 2006 Texas Food Establishment Rules listed in Subchapter K. Minor amendments have also been made to correct language, punctuation, and to provide clarity.

The amendment to §229.177 concerns the certification of food managers in areas under the department's permitting jurisdiction. The agency name is changed to reflect the Department of State Health Services and correct one rule reference update.

New §229.178 is based on Senate Bill 552 of the 80th Legislature regarding the accreditation of basic food safety education and training programs for food handlers. This bill requires the Health and Human Services Commission to adopt rules to define the basic food safety training or education required to be included in a course curriculum. The basic course may not exceed two hours in length and may require a participant to achieve a passing score on an examination.

FISCAL NOTE

Susan Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for the first five-year period that §229.172, and §229.176 are in effect, there will be an increase of $175,795 each year in the fiscal implications to state government as a result of issuing five-year certificates. For the first five-year period that §229.178 is in effect, there will also be an increase in fiscal implications as businesses or persons apply for accreditation of food handler programs. It has been determined that there will be an increase of $9,000 the first year, $3,000 the second year, $12,000 the third year, $6,000 the fourth year, and $15,000 the fifth year. There is no fiscal implications as a result of §229.177. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated costs to small businesses or micro-businesses who elect to voluntarily comply with the sections as proposed. There will be a new licensing fee for businesses or persons who want to have their food handler training program accredited by the department under §229.178. The probable economic cost to persons requesting this accreditation is $300 per year. There is no negative impact on local employment.

ECONOMIC IMPACT STATEMENT

Regarding §229.172, §229.176, and §229.178, the purpose of the rules is to provide the framework for accrediting food manager and food handler level food safety programs in accordance with the Texas Health and Safety Code, Chapter 438, Subchapters D and G. A uniform standard governing the accreditation of food safety programs enhances the recognition of reciprocity among regulatory agencies and reduces the expense of duplicate education incurred when food establishment managers work in multiple regulatory jurisdictions.

REGULATORY FLEXIBILITY ANALYSIS

Sections 229.172 and 229.176 establish the standards for the education or the demonstration of knowledge for the food establishment managers. This provides more qualified personnel, thereby reducing the risk of foodborne illness outbreaks

caused by improper food preparation and handling techniques. The state accreditation of a program or test site is voluntary. This allows programs a choice of state or national examination certification to meet the needs of their clients.

Section 229.178 establishes the standards for the education of the food handlers that also provide more qualified personnel, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques. The state accreditation of a program is voluntary, and allows programs to accredit their program and provide reciprocity for students.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of these sections. The public benefit anticipated as a result of administering the sections as proposed is practices and increased knowledge of food safety within the food service industry, resulting in a lesser risk of becoming ill from a foodborne illness.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments and new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Deborah Marlow, Food Establishments Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6753, extension 2138, or by email to ione.wenzel@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register*, and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Food Establishments Group website (www.dshs.state.tx.us/foodestablishments). Please contact Ione Wenzel at (512) 834-6753, extension 2138, or ione.wenzel@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments and new rule are authorized by Health and Safety Code, Chapter 438, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to §438.042, food service programs; §438.106, for certification of food managers, and §438.043, for basic food safety accreditation, and §437.0076(b), for certified food manager; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments and new rule affect the Health and Safety Code, Chapters 437, 438, and 1001; and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§229.172. Accreditation of Certified Food Management Programs.

(a) (No change.)

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) ANSI-CFP Program Accreditation--The American National Standard Institute (ANSI) and the Conference for Food Protection (CFP) accredits programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.

(4) [~~(3)~~] Certificate--The documentation issued by the department or an organization that administers a department approved examination verifying that an individual has complied with the requirements of this section.

(5) [~~(4)~~] Certification--The process whereby a certificate is issued.

(6) [~~(5)~~] Certified food manager--A person who has demonstrated that they have the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a food safety examination as described in this section.

(7) [~~(6)~~] Certified food management program--A program accredited by the department that provides food safety education for food establishment managers and administers an approved examination for certification or recertification purposes.

(A) Certification program--A program whose course work consists of a minimum of 14 hours of instruction on food safety topics which may include traditional or alternative methods of training, including distance education, and at least a one-hour proctored department approved examination.

(B) Recertification program--A program whose course work consists of six hours of instruction on food safety topics, which may include traditional or alternative methods of training, including distance education, and a department approved proctored examination.

[~~(7) Certified food management program licensee--The individual, corporation or company that is licensed by the department to operate certified food management programs.~~]

[(8) Certified food management program sponsor--An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the program.]

[(9) Conference for Food Protection--An independent national voluntary nonprofit organization to promote food safety and consumer protection.]

(8) [(10)] Continuing education--Documented professional education or activities that provide for the continued proficiency of a certified food management program instructor.

(9) [(11)] Department--Department of State Health Services [The Texas Department of Health].

(10) [(12)] Examination administrator--An individual or individuals who are designated in writing to the department, by the licensee, who is responsible for administering food manager certification examinations.

(11) [(13)] Food--A raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(12) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in subparagraph (C)(iv) of this paragraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules; or

(vii) a private home that receives catered or home-delivered food.

[(14) Food establishment--An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; retail food store; satellite or catered feeding location; catering operation, if the operation provides food directly to a consumer or to a conveyance used to transport people; market; remote catered operations; conveyance used to transport people; institution or food bank that relinquishes possession of food to a consumer directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.]

[(A) The term includes: an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location, unless the vending or feeding location is permitted by the regulatory authority; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food establishments where consumption is on or of the premises; and regardless of whether there is a charge for the food.]

[(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; a bed and breakfast limited facility as defined in §229.162(4)(A) of this title relating to Definitions; or a private home.]

(13) [(15)] Law--Applicable local, state and federal statutes, regulations and ordinances.

(14) Licensee--The individual, corporation or company that is licensed by the department to operate certified food management programs.

(15) [(16)] Person--An association, corporation, individual, partnership or other legal entity, government or governmental subdivision or agency.

(16) [(17)] Proctor--The examination administrator or a person who is designated to assist the examination administrator.

(17) [(18)] Psychometric--Scientific measurement or quantification of human qualities, traits or behaviors.

(18) [(19)] Qualified [food management program] instructor--An individual whose educational background and work experience meet the requirements for approval as a qualified food management program instructor as described in this section.

[(20) Renewal Certificate--The certificate issued by the department verifying that a certified food manager has completed the application and submission of fees for renewal of a department issued certificate.]

(19) [(21)] Reciprocity--Acceptance by state and local regulatory authorities of a Department approved food manager certificate.

(20) [(22)] Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment [The state or local enforcement body or authorized representative having jurisdiction over the food establishment].

(21) [(23)] Secure--Access limited to the certified food manager licensee or examination administrator.

(22) [~~(24)~~] Single entity--A corporation that educates only its own employees.

(23) Sponsor--An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the program.

(24) [~~(25)~~] Traceable means--A method of submitting [~~mailing~~] documents, which can be tracked in the event of loss or delay.

(25) Two-Year Renewal Certificate--The certificate issued by the department from May 6, 2004 to April 24, 2008, verifying that a certified food manager has completed the application and submission of fees for renewal of a department issued certificate.

(c) (No change.)

(d) Licensing of certified food management program licensee. The department shall issue a license of accreditation to each certified food management program licensee who has demonstrated compliance with this section. A license issued under these rules will expire two years from the date of issuance. This license is not transferable on change of ownership, name, or site location.

(1) Application. A person wishing to apply for a certification or recertification certified food management program license shall submit a completed [~~an~~] application to the department.

(2) Certified food management program license fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (p)(1) of this section.

(3) (No change.)

(4) Sponsor [~~Certified food management program sponsor~~]. The licensee may designate a program sponsor as the person responsible for the administrative management of the program.

(5) Qualified [~~Certified food management program~~] instructor. A list of all qualified [~~department certified~~] food management program instructors who plan to teach an accredited certification or recertification course shall be provided to the department. A completed [~~An~~] instructor application, along with other necessary documentation must be submitted for all non-qualified [~~non-certified~~] instructors.

(6) Training methods. Training methods shall be designated on the application. Documentation must be provided to the department verifying that the time required to complete a [~~an alternative~~] training program is equivalent to 14 hours of training for certification and six hours for recertification.

(7) Certification examination. Department approved examination(s) utilized by the certified food protection management programs shall be designated on the completed application.

(e) (No change.)

(f) Responsibilities of a [~~certified food management program~~] licensee.

(1) Compliance with certified food management program law and rules. The licensee is responsible for compliance with applicable certified food management program law and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (p) of this section.

[~~(3) Change of ownership, site location, or change of name. A new licensing application, to include non-refundable fee(s) as described in this section, shall be submitted prior to change(s) including, but not limited to license change of ownership, site location, or change of name.~~]

(3) [~~(4)~~] Certified food management program course content. All food management programs must be taught utilizing [~~the course content established in the Conference for Food Protection's Standards for Accreditation of Food Protection Manager Certification Programs, and must meet~~] the training and time requirements in Health and Safety Code (HSC), §438.043(1), (2), and (3) [~~subsection (d)(6) of this section~~].

(4) [~~(5)~~] Change of [~~program~~] sponsor. The licensee shall notify the department in writing of the name of the new program sponsor.

(5) [~~(6)~~] Change of examination administrator. The licensee shall submit a signed security agreement for each new examination administrator prior to administering the department examination. New examination administrators must receive instruction on administrative responsibilities for examination security and processing.

(6) [~~(7)~~] Change of qualified [~~food management~~] instructor. The licensee shall ensure that only a department qualified [~~food management~~] instructor serves as the instructor for the food management program. All new instructors must complete the application for new instructors that must be submitted by the licensee to the department with the applicable documentation. All new instructors must receive instruction on the applicable law and rules and administrative responsibilities.

(7) [~~(8)~~] Submission [~~Mailing~~] of answer sheets. The licensee shall ensure that the answer sheets used for computerized grading shall be submitted [~~mailed~~] to the department by traceable means. The completed answer sheets must be received by the department within seven working days of the examination date.

(g) Requirements for qualification of [~~certified food management program~~] instructors. The instructors for all food management programs shall be department qualified prior to teaching a class. The instructors for all certified food management programs shall meet the qualifications in these rules. Instructors meeting these qualifications shall be approved for the two-year permit term of the certified food management program licensee. The completed application form shall be submitted to the department through the accredited certified food management program licensee.

(1) New [~~food management~~] instructors. A completed application for new instructors must be submitted by the program licensee to the department with the following documentation:

(A) - (C) (No change.)

(2) Nationally accredited program instructors. Nationally accredited program instructors who have met the minimum standards as set forth by this section shall be given reciprocity when instructing and administering an ANSI-CFP Program Accreditation [~~a Conference for Food Protection accredited~~] examination.

(h) Responsibilities of qualified [~~certified food management program~~] instructors.

(1) (No change.)

(2) Training requirements. All qualified instructors are responsible for instructing the course content as specified in subsection (f)(3) [~~(f)(4)~~] of this section, and meeting the training time requirements as specified in subsection (d)(6) of this section.

(3) (No change.)

(i) Requirements for the renewal of qualified [~~food management program~~] instructors. In order to renew an instructor's qualification the program licensee must comply with the requirements of this subsection.

(1) Contact hours for continuing education. Certified food management programs shall submit a completed renewal application and documentation of five contact hours of continuing education for each instructor during the two-year program license period to maintain qualification as a certified food manager program instructor.

(2) - (3) (No change.)

(j) Responsibilities of the examination administrators.

(1) (No change.)

(2) Examination security agreement. An examination administrator must complete, sign and date a security agreement and submit to the department through the certified food management program licensee. The department may not issue examinations to an examination administrator who does not have a signed security agreement on file with the department.

(3) (No change.)

(4) Submission of examination booklets and answer sheets. The examination administrator shall submit the examination booklets and answer sheets used for computerized grading via traceable means along with department forms as required. The examination booklets, completed answer sheets and required forms must be received by the department within seven working days of the examination date.

[~~(4) Mailing answer sheets. Answer sheets used for computerized grading shall be mailed to the department by traceable means. The completed answer sheets must be received at the department within seven working days of the examination date.~~]

(5) - (6) (No change.)

(k) Certified food manager certificates.

(1) Certificate issuance. Certified food manager certificates for candidates who complete an accredited program and pass the department examination will be mailed directly to the candidate [~~at the address provided on the computerized grading sheet~~].

(2) Certificate period. A certified food manager certificate issued by the department under this section shall be valid for five [~~two~~] years from the date of passing the examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.

(3) Two-year renewal certificate [~~Certificate renewal~~]. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, [~~Department~~] must be renewed every two years and may be renewed two times [~~without retaking the examination prior to recertification~~].

(4) Recertification. Candidates may become recertified by taking a recertification class and passing a department approved examination, or by passing an examination as described in §229.176(h)(5) of this title (relating to Certification of Food Managers).

(5) Department certificate [~~Certificate~~] replacement. An individual requesting a certified food manager certificate replacement must submit a completed written application [~~request~~] to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

[~~(6) Expired certificates. Certified food managers whose certification has expired shall complete an accredited certification course and pass the final examination.~~]

(6) [~~(7)~~] Certification through single entity corporations. Candidates from accredited single entity corporations will receive food management certificates as described in this section, except that the food management certificate shall:

(A) clearly indicate that the certificate is for the single entity only;

(B) be recognized by regulatory authorities for only that single entity; and

(C) not receive reciprocity or recertification.

(l) Department examination criteria. The department examination shall meet accepted psychometric standards for reliability, validity and passing score. The department certification and recertification examinations [~~examination~~] shall consist of 75 statistically valid questions to be administered at one time following the required training which precedes the examination. [~~The department recertification examination shall consist of 50 statistically valid questions to be administered at one time following the required training which precedes the examination.~~]

(m) National examination criteria. National food manager examinations recognized by the ANSI-CFP Program Accreditation [~~Conference for Food Protection~~] shall be considered department approved examinations. [~~Examination administrators for national examinations must implement and maintain all of the administrative procedures as outlined in the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.~~]

(n) (No change.)

(o) Department examination [~~Examination~~] administration. Examination administrators shall implement and maintain the following examination administration procedures for a program utilizing the department examination.

(1) - (5) (No change.)

(6) All completed answer sheets for the department examinations shall:

(A) be submitted [~~mailed~~] by traceable means, and received by the department within seven working days of the examination date for grading and processing;

(B) be submitted in a condition acceptable for immediate scanning. Forms requiring extensive correction shall be returned to the examination administrator ungraded; and

(7) (No change.)

(p) Required fees. All fees are payable to the Department of State Health Services [~~Texas Department of Health~~] and are non-refundable. Fees must be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. The fees shall be:

(1) Certified food manager program license fee for initial, renewal, or change of ownership. A program fee shall be $600 for a two-year license for each certification or recertification program.

(2) Certified food manager program amended license fee. Program amendment fees shall be $300 for each certification or recertification program.

(3) [~~(2)~~] Examination packet fee. The fee for the department examination shall be $25 [~~$10.00~~] and shall include a manager's certificate valid for five [~~two~~] years if the candidate passes the examination. If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.

(4) [~~(3)~~] Two-year renewal [~~Renewal~~] certificate fee. The fee for [~~a~~] renewal of a two-year certificate issued shall be $10.

(5) [~~(4)~~] Replacement certificate. A replacement certificate fee for the department examination shall be $15 [~~$10~~].

(6) [~~(5)~~] Late fee. Certified food manager licensees submitting a completed renewal application to the department after the expiration date shall pay an additional $100 as a late fee.

(7) [~~(6)~~] Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(q) - (r) (No change.)

(s) Department audits. Examination and classroom audits may be conducted to assess program compliance. Licensee shall allow personnel authorized by the department access for the purposes of an audit. Audits may be based on analysis of date compiled by the department. [~~Examination and classroom audits shall be conducted to assess program compliance. Audits may be based on analysis of data compiled by the department.~~]

(t) Denial, suspension and revocation of program accreditation. An accredited food manager program license may be denied, suspended or revoked for the following reasons:

[~~(1) an average quarterly candidate failure rate in any one quarter of 25% or higher on examinations;~~]

(1) [~~(2)~~] a licensee, examination administrator or proctor breaches the security agreement;

(2) [~~(3)~~] a licensee is delinquent in payment of fees as described in this section; or

(3) [~~(4)~~] violation of the provisions of this section.

(u) (No change.)

(v) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:

(A) record the suspension of the license in the department's records;

(B) report the suspension as appropriate; and

(C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

§229.176. Certification of Food Managers.

(a) (No change.)

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.[~~:~~]

(1) ANSI-CFP Program Accreditation--The American National Standard Institute (ANSI) and the Conference for Food Protection (CFP) accredits programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.

(2) [~~(1)~~] Certificate--The documentation issued by the department or an organization that administers a department approved examination verifying that an individual has complied with the requirements of this section.

(3) [~~(2)~~] Certification--The process whereby a certificate is issued.

(4) [~~(3)~~] Certified food manager--A person who has demonstrated that he/she has the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a food safety examination as described in this section.

[~~(4) Certified food manager licensee--The individual, corporation, or company that is licensed by the department to administer a department approved examination for food manager certification and who complies with the examination site requirements.~~]

(5) Certified food manager examination--A department approved examination for food manager certification.

[~~(6) Conference for Food Protection--An independent national voluntary nonprofit organization promoting food safety and consumer protection.~~]

(6) [~~(7)~~] Department--Department of State Health Services [~~The Texas Department of Health~~].

(7) [~~(8)~~] Examination administrator--An [~~an~~] individual or individuals who are designated in writing to the department, by the licensee, who is responsible for administering food manager certification examinations.

(8) [~~(9)~~] Examination site--The physical location at which the department approved examination is administered.

(9) [~~(10)~~] Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(10) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home

delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules; or

(vii) a private home that receives catered or home-delivered food.

[~~(11) Food establishment--An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; retail food store; satellite or catered feeding location; catering operation, if the operation provides food directly to a consumer or to a conveyance used to transport people; market; remote catered operations; conveyance used to transport people; institution or food bank that relinquishes possession of food to a consumer directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.~~]

[~~(A) The term includes: an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location, unless the vending or feeding location is permitted by the regulatory authority; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food establishments where consumption is on or off the premises; and regardless of whether there is a charge for the food.~~]

[~~(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; a bed and breakfast limited facility as defined in §229.162(4)(A) of this title.~~]

(11) [~~(12)~~] Law--Applicable local, state and federal statutes, regulations and ordinances.

(12) Licensee--The individual, corporation, or company that is licensed by the department to administer a department approved examination for food manager certification and complies with the examination site requirements.

(13) - (18) (No change.)

(19) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment [~~The state or local enforcement body or authorized representative having jurisdiction over the food establishment~~].

(20) - (21) (No change.)

(c) Certified food manager.

(1) (No change.)

(2) Certification by a food safety examination. To be certified, a food manager must pass a department approved examination or a national examination recognized by the ANSI-CFP Program Accreditation [~~Conference for Food Protection~~].

(3) - (4) (No change.)

(d) Licensing of certified food manager licensee. The department shall issue a license to certified food manager licensees meeting the requirements of this subsection. A license issued under these rules shall expire two years from the date of issuance. A license is not transferable on change of ownership, name, or change of site location.

(1) Application. Persons wishing to apply for a certified food manager license shall submit a completed [~~an~~] application to the department.

(2) Certified food manager licensee fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (o)(1) of this section.

(3) - (5) (No change.)

(e) Responsibilities of [~~certified food manager~~] licensee.

(1) Compliance with food manager laws and rules. The licensee is responsible for compliance with applicable food manager laws and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (o) of this section.

[~~(3) Change of ownership, site location, or change of name. A new licensing application package, to include non-refundable fee(s) as described in this section, shall be submitted prior to a change of licensee ownership, or site location, or change of name.~~]

(3) [~~(4)~~] Change of the examination administrator. The licensee shall submit a signed security agreement by a new examination administrator prior to administering the department examination. New examination administrators must receive instruction on administrative responsibilities for examination security and processing. Based on the most current department guidelines.

(4) Submission of answer sheets. The licensee shall ensure that the answer sheets used for computerized grading shall be submitted to the department by traceable means. The completed answer sheets must be received by the department within seven working days of the examination date.

[~~(5) Examination administration. The licensee shall directly administer the department approved examination.~~]

(f) Responsibilities of department examination administrators.

(1) - (3) (No change.)

(4) Submission of examination booklets and answer sheets. The examination administrator shall submit the examination booklets and answer sheets used for computerized grading via traceable means along with department forms as required. The examination booklets, completed answer sheets and required forms must be received by the department within seven working days of the examination date.

[~~(4) Mailing answer sheets. Answer sheets used for computerized grading shall be mailed to the department by traceable means. The completed answer sheets must be received at the department within seven working days of the examination date.~~]

(5) - (6) (No change.)

(g) (No change.)

(h) Certified food manager certificates.

(1) (No change.)

(2) Department certificate issuance. Certified food manager certificates for candidates who pass the department's examination will be mailed directly to the candidate [~~at the address provided on the computerized grading sheets~~].

(3) Certificate period. A certified food manager certificate issued by the department shall be valid for five [~~two~~] years from the date of passing the examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.

(4) Two-year renewal certificate [~~Certificate renewal~~]. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, must be renewed every two years and may be renewed two times [~~without retaking the examination prior to recertification~~].

(5) (No change.)

(6) Department certificate replacement. An individual requesting a certified food manager certificate replacement must submit a completed written application [~~request~~] to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(i) (No change.)

(j) National examination criteria. National food manager examinations recognized by the ANSI-CFP Program Accreditation [~~Conference for Food Protection~~] shall be considered department approved examinations. [~~Examination administrators for national examinations must implement and maintain all of the administrative procedures as outlined in the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.~~]

(k) - (l) (No change.)

(m) Department examination administration. Examination administrators shall implement and maintain the following examination administration procedures for a program utilizing the department examination:

(1) - (5) (No change.)

(6) All completed answer sheets for the department examinations shall:

(A) be submitted [~~mailed~~] by traceable means, and received by the department within seven working days of the examination date for grading and processing;

(B) (No change.)

(7) (No change.)

(n) (No change.)

(o) Required fees. All fees are payable to the Department of State Health Services [~~Texas Department of Health~~] and are non-refundable. Fees must be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. Fees shall be:

(1) Certified food manager licensee fee. Certified food manager licensee fees shall be valid for a two-year period and shall be based on the number of sites at which the certified food manager licensee administers the examinations based on the following scale:

(A) one site:

(i) the two-year license fee for initial, renewal, or change of ownership shall be $400; and

(ii) a license fee for a program amendment during the current licensure period shall be $200;

[~~(A) one site--$400;~~]

(B) two to ten sites:

(i) the two-year license fee for initial, renewal, or change of ownership shall be $1,000; and

(ii) a license fee for a program amendment during the current licensure period shall be $500;

[~~(B) two to ten sites--$1,000; or~~]

(C) over ten sites:

(i) the two-year license fee for initial, renewal, or change of ownership shall be $2,000; and

(ii) a license fee for a program amendment during the current licensure period shall be $1,000.

[~~(C) over ten sites--$2,000.~~]

(2) Examination packet fee. The fee for a department examination packet shall be $25 [~~$10~~] and shall include a manager's certificate valid for five [~~two~~] years if the candidate passes the examination. If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.

(3) Two-year renewal [~~Renewal~~] certificate fee. The fee for a two-year renewal certificate shall be $10.

(4) Replacement certificate fee. A replacement certificate fee for the department examination shall be $15 [~~$10~~].

(5) Late fee. A certified food manager licensee submitting a completed renewal application to the department after the expiration date shall pay an additional $100 as a late fee.

(6) (No change.)

(p) - (q) (No change.)

(r) Department audits. Audits of certified food manager licensees shall be conducted to assess compliance with these rules. Audits may be based on analysis of data compiled by the department. Licensees shall allow personnel authorized by the department access for the purposes of an audit.

(s) - (t) (No change.)

(u) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:

(A) record the suspension of the license in the department's records;

(B) report the suspension as appropriate; and

(C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

§229.177. Certification of Food Managers in Areas Under the Department of State Health Services [~~Texas Department of Health~~] Permitting Jurisdiction.

(a) - (b) (No change.)

(c) Food manager certification exemptions. The following food establishments are exempt from the requirements in subsection (b) of this section:

(1) - (2) (No change.)

(3) establishments that do not prepare or handle exposed potentially hazardous foods as defined in §229.162(74) [~~§229.162(66)~~] of this title (relating to Definitions); or

(4) (No change.)

(d) - (f) (No change.)

§229.178. Accreditation of Food Handler Programs.

(a) Purpose. This section is intended to provide the framework for accrediting food safety education or training programs for food handlers in accordance with the Health and Safety Code (HSC), Chapter 438, Subchapter D, §438.0431. A uniform standard governing the accreditation of food handler programs enhances the recognition of reciprocity among regulatory agencies and reduces the expense of duplicate education incurred when food handlers work in multiple regulatory jurisdictions. Education of the food handlers provides more qualified employees, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Accredited food handler program--A program approved by the department that meets the standards set forth in this section.

(2) Department--Department of State Health Services.

(3) Food--A raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(4) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules; or

(vii) a private home that receives catered or home-delivered food.

(5) Food handler--A food service employee who works with unpackaged food, food equipment or utensils, or food contact surfaces.

(6) Law--Applicable local, state and federal statutes, regulations and ordinances.

(7) Licensee--The individual, corporation or company that is licensed by the department to operate certified food handler programs.

(8) Person--An association, corporation, individual, partnership or other legal entity, government or governmental subdivision or agency.

(9) Reciprocity--Acceptance by state and local regulatory authorities of a food handler certificate issued by a department accredited food handler program.

(10) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(11) Sponsor--An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the program.

(c) Food handler education and training program. The department may accredit an education or training program for basic food safety. The program shall include employee knowledge, responsibilities and training as required in the Texas Food Establishment Rules (TFER).

(1) Education or training course curriculum. A food handler training or education course shall include the following basic food safety principles.

(A) Foodborne illness. Instruction on foodborne illness shall include the definition of foodborne illness, the causes and preventive measures, including employee reporting requirements as defined in §229.163 of this title (relating to Management and Personnel).

(B) Good hygienic practices. Instruction on good hygienic practices shall include the procedures as required in §229.163 of this title.

(C) Preventing contamination by employees. Instruction shall include the training as required in §229.164(e)(1)(D) of this title (relating to Food), regarding the training requirements for contact with ready to eat food with their bare hands.

(D) Cross Contamination. Instruction on cross contamination shall include procedures on the prevention of cross-contamination of foods, sanitization methods and corrective actions as required in §229.164 of this title and §229.165 of this title (relating to Equipment, Utensils, and Linens).

(E) Time and temperature. Instruction shall include time and temperature control of foods to limit pathogen growth or toxin production as required in §229.164 of this title.

(2) Course length. The course length may not exceed two hours.

(3) Course examination. A training or education program may require a participant to achieve a passing score on an examination to successfully complete the course.

(4) Internet programs. A program accredited under this section may be delivered through the Internet.

(d) Food handler certificate.

(1) Certificate period. A food handler certificate issued by an accredited food handler program shall be valid for two years.

(2) Certificate reciprocity. Department accredited food handler program issued certificates shall be recognized statewide by regulatory authorities as the valid proof of successful completion of a department accredited food handler program.

(e) Licensing of an accredited food handler program licensee. The department shall issue a license of accreditation to each certified food handler program licensee who has demonstrated compliance with this section. A license issued under these rules will expire two years from the date of issuance. This license is not transferable on change of ownership, or site location.

(f) Responsibilities of a licensee.

(1) Compliance with certified food handler program law and rules. The licensee is responsible for compliance with applicable certified food handler program law and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (g) of this section.

(g) Required fees. All fees are payable to the department and are non-refundable. Fees must be submitted with the appropriate completed application that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas.

(1) Accredited food handler program license fee for initial, renewal, or change of ownership. A program fee shall be $600 for a two-year license for each food handler program.

(2) Accredited food handler program amended license fee. Program amendment fees shall be $300.

(3) Late fee. Accredited food handler program licensees submitting a completed renewal application to the department after the expiration date shall pay an additional $100 as a late fee.

(4) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(h) Certified food handler program registry. The department shall maintain a program registry of all accredited food handler programs. The registry shall be made available on the department website.

(i) Department audits. Classroom audits may be conducted to assess program compliance. Licensee shall allow personnel authorized by the department access for the purposes of an audit. Audits may be based on analysis of date compiled by the department.

(j) Denial, suspension and revocation of program accreditation. An accredited food handler program license may be denied, suspended or revoked for the following reasons:

(1) a licensee is delinquent in payment of fees as described in this section; or

(2) violation of the provisions of this section.

(k) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(l) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named, and:

(A) record the suspension of the license in the department's records;

(B) report the suspension as appropriate; and

(C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without addi-

tional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act, and this chapter; however, the license will not be renewed until subsection (g) of this section is met.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

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Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §289.228 concerning radiation safety requirements for analytical and other industrial radiation machines; the amendment to §289.251, concerning exemptions, general licenses, and general license acknowledgements; the amendment to §289.252 concerning licensing of radioactive material; and the amendment to §289.258 concerning licensing and radiation safety requirements for irradiators.

BACKGROUND AND PURPOSE

The proposed amendment to §289.228 adds a list of industrial radiation machines to specify the industrial radiation machines that are applicable to this section. The revision adds exemptions for uses of minimal threat radiation machines, uses of certified and certifiable cabinet x-ray systems, and uses of portable/handheld fluorescence x-ray (open beam) devices. In addition, equipment requirements are added for certified and certifiable cabinet x-ray systems and package x-ray systems; and personnel requirements are added to address instructions for bomb detection radiation machines.

The proposed amendment to §289.251 provides corrections and clarifications, revisions due to legislation that removed the need for administrative review of licenses every two years, and additions regarding exportation and annual inventories that are items of compatibility with the United States Nuclear Regulatory Commission (NRC). As an agreement state with the NRC, Texas must adopt them.

The proposed amendment to §289.252 is necessary to revise the license review and expiration requirements in response to legislation, to increase the amount and methods of calculating the need for decommissioning plans and financial assurance for certain licensees that is an item of compatibility with the NRC, and to add increased control requirements that are required by the NRC and must be adopted by Texas as an agreement state.

The proposed amendment to §289.258 provides corrections and clarifications as well as additional information on personnel monitoring required by the NRC and must be adopted by Texas as an agreement state.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.228, 289.251, 289.252, and 289.258 have been reviewed; and the department has determined that the reasons for adopting these sections continue to exist because rules on these subjects are needed.

SECTION-BY-SECTION SUMMARY

Section 289.228 changes the title of the section to read "Radiation Safety Requirements for Industrial Radiation Machines" instead of "Radiation Safety Requirements for Analytical and Other Industrial Radiation Machines" for clarification of the radiation machines that this section addresses. The words "analytical and other" are deleted from the first sentence in §289.228(a) to be consistent with the change in the title to this section and a list of industrial radiation machines is added to specify the industrial radiation machines that are applicable to this section. The definitions of "Analytical radiation machines" and "Other industrial radiation machines" are deleted from §289.228(c) because these terms were not definitions, but instead specified lists of these types of radiation machines that are addressed in §289.228(a). A definition of "Minimal threat radiation machines" is added to §289.228(c) to clarify that these radiation machines are applicable to this section, and examples of minimal threat radiation machines are added to this definition to specify the minimal threat radiation machines that are applicable to this section. Subsequent definitions are renumbered as a result of the addition and deletion of definitions.

New §289.228(d) is added to address exemptions for uses of minimal threat radiation machines, uses of certified and certifiable cabinet x-ray systems, and uses of portable/handheld fluorescence x-ray (open beam) devices as the current section does not include exemptions. Subsequent subsections are renumbered as a result of the addition of the new subsection.

In addition, renumbered §289.228(e) adds equipment requirements for certified and certifiable cabinet x-ray systems and package x-ray systems because the current section does not specify requirements for these x-ray systems. Concerning renumbered §289.228(h)(1), current subparagraph (D) is deleted as the department has determined that instructions in and demonstration of competence in symptoms of an acute localized exposure are not applicable. Section 289.228(h) also adds two new paragraphs to provide instructions for bomb detection radiation machines and record and documentation requirements.

The revisions to §289.251 are necessary to correct references; and these changes are made in §§289.251(e)(1)(A), 289.251(e)(2)(A), 289.251(e)(2)(D), 289.251(e)(2)(E), 289.251(e)(3)(A)(i)(VIII), and 289.251(f)(4)(J).

The word "interest" is removed from §298.251(f)(2)(D) for clarity. An incorrect numerical reference is corrected in §289.251(f)(4)(H)(iv)(VII). Information is added to clarify the information to be included in the report referenced in this subsection, and a subclause reference is added for clarity in §289.251(f)(4)(H)(iv)(IX).

An addition is made relating to the exportation of certain devices containing radioactive material. This addition begins in §289.251(f)(4)(H)(iv)(IX) and continues in §289.251(f)(4)(H)(iv)(XVI). New references to this information are added in §289.251(f)(4)(H)(iv)(IX) and §289.251(g)(1)(C). The words "or export" are added to §289.251(f)(4)(H)(iv)(X). Section 289.251(f)(4)(H)(iv)(XVIII) adds new requirements for responding to agency requests. These changes are necessary for compatibility with the NRC.

Section 289.251(f)(4)(H)(iv)(XVII) is added to require general licensees to follow reporting requirements in §289.202 for theft or loss, but exempts them from other subparts of §289.202.

Section 289.251(f)(4)(J) clarifies that manufacturer instructions for test performance must be maintained.

Section 289.251(g)(3) is added to address compatibility issues with the NRC regarding reporting requirements for information requested of general licensees by the Agency.

Changes in §289.251(j) and new §289.251(k) are made to address legislation that removed the need for administrative reviews and changed expiration requirements.

References are changed to properly refer to the appropriate section or subsection of Chapter 289. These changes are included in §§289.252(d)(6), 289.252(u)(4), 289.252(gg)(1)(A), 289.252(gg)(6)(B), 289.252(hh)(1), and 289.252(hh)(2).

Changes in §289.252(f)(3)(L) are made to clarify the terms of the required inventory of radioactive material.

Changes in §289.252(o) addresses compatibility issues with the NRC. The phase, "in the healing arts for use as a calibration or reference source" is replaced with specific references to §289.256, which concerns medical uses of radioactive material.

In §289.252(o)(1)(H), the phrase "procedures for disposition of unwanted or unused radioactive material" was changed to "a legend and methods for labeling sources and devices as to their radioactive content." This is a result of compatibility issues with the NRC.

Section 289.252(r)(3)(A) is changed to make the requirement compatible with the specific requirement in §289.256 concerning medical and veterinary use of radioactive material.

Section 289.252(x)(4) is changed to add notification requirements from the licensee or certain changes to their licensed activities.

Sections 289.252(y) and (z) are changed to address the need to remove the requirement for administrative reviews made necessary by recent legislation.

Section 289.252(gg) is changed to address financial assurance criteria and to increase required amounts necessary to assure that decommissioning of licensees' sites is properly funded.

Section 289.252(ii) is added to provide the increased control requirements required by the NRC.

Section 289.252(jj)(9) is added to provide detailed appendices for the implementation of the increased control requirements in §289.252(ii).

In §289.258(q)(5) and (dd)(1), the term "under" is replaced by "in accordance with" for clarity.

Section 289.258(u) is changed to address the NRC requirements regarding the use of an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor for processing personnel dosimeters.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that, for each year of the first five-year period that §§289.228, 289.251, 289.252, and 289.258 are in effect, there will be no fiscal implications to the state or local government as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses, micro-businesses, or other persons required to comply with §§289.228, 289.251, and 289.258 as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Regarding §289.252, licensees that are small businesses, micro-businesses, or other persons required to comply with the section as proposed and choose to submit the financial assurance amount specified in the rule rather than submitting a decommissioning plan, will incur an increase in financial assurance for decommissioning ranging from $28,000 to $275,000 over the lifetime of the license. The financial assurance is deposited in the Radiation Perpetual Care Account, not in General Revenue funds. If a licensee's site is adequately decommissioned, the financial assurance is returned to the licensee at that time. There is no anticipated negative impact on local employment.

ECONOMIC IMPACT STATEMENT

Regarding §289.252, the purpose of the rule proposal is to provide economic and public health protection in the event that a radioactive material licensee vacates a facility or site and abandons radioactive material sources and/or contamination. Without some form of assurance that licensees remain responsible for the clean-up costs of their facilities, taxpayer funds would need to be used to provide for the proper clean-up and disposal of radioactive material. Contaminated sites could pose risks to public health and safety. The rule continues to allow for a variety of methods of posting financial assurance as described more fully in the Regulatory Flexibility Analysis below. Licensees that are small businesses, micro-businesses, or other persons required to comply with the section as proposed and choose the option of submitting the financial assurance amount, based on default values specified in the rule, will incur an increase in the amount of financial assurance ranging from $28,000 to $275,000 over the lifetime of the license. The default values are based on the quantity of material authorized by the license to be present at the site and are based on the assumption that a third party must be brought in by the state to perform clean-up and waste disposal activities. Those costs have risen greatly since the last default values were placed into rule in December 2002. There are an estimated 30 to 35 licensees who may be small businesses or micro-businesses. Currently, less than 40 of the department's total number of licensees, approximately 2%, are required to main-

tain financial assurance; and of that 2%, only 13 have chosen the default value option which is being proposed for an increase. Ten of those 13 qualify for the lowest level of financial assurance and would experience a proposed increase of $28,000. Most of the licensees that have chosen to maintain financial assurance are small businesses. Licensees may also choose to submit a decommissioning plan based on actual values. By submitting a decommissioning plan, licensees calculate the amount of financial assurance actually needed to ensure that their facilities and sites are properly decontaminated upon decommissioning.

REGULATORY FLEXIBILITY ANALYSIS

Several regulatory options were considered in determining how to protect the public from economic and adverse public health impacts from the potential of radioactive material licensees deserting facilities and leaving radioactive sources and/or contamination without security or proper disposition. Of those alternatives, all but two have been implemented in order to allow licensees to use the option that best meets their needs and abilities. Regarding §289.252, the options not chosen were for licensees to post no financial assurance and, alternatively, to require that all licensees must post financial assurance. It was determined that posting no financial assurance would put public funds and public health at an unnecessary risk. It was also determined that licenses that were limited to lesser amounts of material or certain types of devices did not pose as great a risk and could, therefore, not be required to post financial assurance. These licensees are not affected by this rule proposal. The alternatives listed are available to licensees who are required to meet the financial assurance requirements.

(1) Limit the amount and/or type of radioactive material in possession to levels that do not require financial assurance.

(2) Prepare a decommissioning plan, including associated costs of decommissioning, for review and approval by the department.

(3) Accept the default values listed in the rule and choose the method of providing this assurance (e.g., prepayment, surety, external sinking fund).

PUBLIC BENEFIT

Ms. Tennyson has also determined that, for each year of the first five years the sections are in effect, the public will benefit from adoption of the amended sections. The public benefit anticipated as the result of enforcing or administering §§289.228, 289.251, 289.252, and 289.258 is to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that the department is able to properly enforce the state's radiation protection rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6770, extension 2239, or by e-mail to Cindy.Cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6770, extension 2239, or Cindy.Cardwell@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER E. REGISTRATION REGULATIONS

25 TAC §289.228

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed amendment affects the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.228. Radiation Safety Requirements for [~~Analytical and Other~~] Industrial Radiation Machines.

(a) Purpose. This section establishes requirements for the use of [~~analytical and other~~] industrial radiation machines not otherwise covered by this chapter. For purposes of this section, industrial radiation machines include, but are not limited to, portable/handheld fluorescence x-ray (open beam), fluoroscopy hand held intensified, fluoroscopy x-ray, industrial accelerator, spectrography x-ray, flash x-ray, flash x-ray for bomb detection, educational facility (x-ray for non-human or not live animal use), diffraction x-ray, uncertified cabinet x-ray, and minimal threat radiation machines.

(b) (No change.)

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

[(1) Analytical radiation machine -- This includes, but is not limited to, x-ray equipment used for x-ray diffraction, fluorescence analysis, spectroscopy, or particle size analysis.]

(1) [(2)] Fail-safe characteristics--Design features that cause beam port shutters to close, or otherwise prevent emergence of the primary beam, upon the failure of a safety or warning device.

(2) [(3)] Local components--Parts of an x-ray system that include areas that are struck by x rays, such as radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors, and shielding, but do not include power supplies, transformers, amplifiers, readout devices, and control panels.

(3) Minimal threat radiation machines--Minimal threat radiation machines include, but are not limited to, fluorescence x-ray (closed beam), gauges x-ray, certified cabinet x-ray, package x-ray, electron beam welding, particle size analyzer, ion-implant, and cathodoluminescence. In addition, minimal threat radiation machines are those radiation machines capable of generating or emitting fields of radiation that, during the operation of which:

(A) no deliberate exposure of an individual occurs;

(B) the radiation is not emitted in an open beam configuration; and

(C) no known physical injury to an individual has occurred.

(4) Open-beam configuration--A radiation machine in which an individual could accidently place some part of his/her body in the primary beam path during normal operation.

[(5) Other industrial radiation machines -- This includes, but is not limited to, x-ray equipment (including cabinet x-ray equipment) used for cathodoluminescence, ion implantation, gauging, or electron beam welding.]

(5) [(6)] Primary beam--Ionizing radiation that passes through an aperture of the source housing by a direct path from the x-ray tube located in the radiation source housing.

(6) [(7)] Safety device--A device that prevents the entry of any portion of an individual's body into the primary x-ray beam path or that causes the beam to be shut off upon entry into its path.

(7) [(8)] X-ray system-- A group of components utilizing x rays to determine the elemental composition or to examine the microstructure of materials.

(d) Exemptions.

(1) Uses of minimal threat radiation machines as specified in §289.231(ll)(3) of this title, are exempt from the requirements of subsections (e)(2)(B) and (C), (f)(3), and (g)(1) of this section.

(2) Uses of certified and certifiable cabinet x-ray systems are exempt from the requirements of subsection (f)(1) and (2) of this section. This exemption will apply only to those radiation machines that do not allow a person or body part to be exposed to the radiation beam.

(3) Uses of portable/handheld fluorescence x-ray (open beam) devices that are manufactured without safety devices are exempt from the requirements of subsection (e)(1)(A) of this section.

(e) [(d)] Equipment requirements.

(1) Safety devices.

(A) A safety device shall be provided on all open-beam configurations.

(B) A registrant may apply to the agency for an exemption from the requirement of a safety device in accordance with §289.231 of this title. Any such request shall include:

(i) a description of the various safety devices that have been evaluated;

(ii) the reason each of these devices cannot be used; and

(iii) a description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.

(2) Warning devices.

(A) Open-beam configurations shall be provided with a visible indication of:

(i) x-ray tube status (ON-OFF) located near the radiation source housing, if the primary beam is controlled in this manner; and/or

(ii) shutter status (OPEN-CLOSED) located near each port on the radiation source housing, if the primary beam is controlled in this manner.

(B) The x-ray control shall provide visual indication whenever x rays are produced.

(C) Warning devices shall be labeled so that their purpose is easily identified and shall have fail-safe characteristics.

(3) Ports. Unused ports on radiation machine source housings shall be secured in the closed position in a manner that will prevent inadvertent opening.

(4) Labeling. Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner to caution individuals that radiation is produced when it is energized. This label shall be affixed in a clearly visible location on the face of the control unit. If the radiation machine is not visible from the control unit, the radiation machine shall have a visible indication that it is energized.

(5) Shutters. On open-beam configurations, each port on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or a coupling has been connected to the port.

(6) Radiation source housing. Each x-ray tube housing shall be equipped with an interlock that shuts off the tube if it is removed from the radiation source housing or if the housing is disassembled.

(7) Generator cabinet. Each x-ray generator shall be supplied with a protective cabinet that limits leakage radiation measured at a distance of 5 centimeters from its surface such that it is not capable of producing a dose in excess of 0.5 millirem (5.0 microsieverts (μSv)) in any one hour.

(8) Certified and certifiable cabinet x-ray systems. Certified and certifiable cabinet x-ray systems, including those designed to allow admittance of individuals, shall:

(A) be maintained in compliance with Title 21, Code of Federal Regulations (CFR), §1020.40 and no modification shall be made to the system unless prior agency approval has been granted in accordance with §289.231(d) of this title; and

(B) comply with the following requirements.

(i) No registrant shall permit any individual to operate a cabinet x-ray system until the individual has received a copy of and instruction in the operating procedures for the unit.

(ii) Tests for proper operation of interlocks shall be conducted and recorded at intervals not to exceed 12 months.

(iii) The registrant shall perform an evaluation to determinate compliance with §289.231(o)(1) - (3) of this title and Title 21, CFR, §1020.40 at intervals not to exceed one year. The registrant shall ensure that radiation emitted 5 centimeters from the external surface of the cabinet x-ray system does not exceed 0.5 millirem (5.0 μSv) in any one hour.

(iv) Documentation of the requirements in clauses (i) - (iii) of this subparagraph shall be maintained by the registrant for 10 years for inspection by the agency.

(9) Package x-ray systems.

(A) The registrant shall perform an annual evaluation to ensure radiation emitted 5 centimeters from the external surface of the package x-ray system does not exceed 0.5 millirem (5.0 μSv) in any one hour.

(B) Tests for proper operation of interlocks shall be conducted and recorded at intervals not to exceed 12 months.

(C) Documentation of the requirements in subparagraphs (A) and (B) of this paragraph shall be maintained by the registrant for 10 years for inspection by the agency.

(f) [~~(e)~~] Area requirements.

(1) Radiation levels. The local components of an x-ray system shall be located and arranged and shall include sufficient shielding or access control such that no radiation levels exist in any area surrounding the local component group that could result in a dose to an individual present in the area in excess of the dose limits specified in §289.231 of this title.

(2) Surveys.

(A) Radiation surveys, as required by §289.231 of this title, of all radiation machines and x-ray systems sufficient to show compliance with paragraph (1) of this subsection shall be performed:

(i) upon installation of the equipment;

(ii) following any change in the initial arrangement, number, or type of local components in the system;

(iii) following any maintenance requiring the disassembly or removal of a local component in the system;

(iv) during the performance of maintenance and alignment procedures if the procedures require the presence of a primary x-ray beam when any local component in the system is disassembled or removed;

(v) any time a visual inspection of the local components in the system reveals an abnormal condition; or

(vi) whenever individual monitoring devices show a significant increase over the previous monitoring period or the readings are approaching the radiation dose limits.

(B) Radiation survey measurements shall not be required if a registrant can demonstrate, to the satisfaction of the agency, compliance with paragraph (1) of this subsection in some other manner.

(3) Posting. Each area or room containing radiation machines shall be conspicuously posted with a sign or signs bearing the radiation symbol and the words "CAUTION - X-RAY EQUIPMENT," or words having a similar intent.

(g) [~~(f)~~] Operating requirements.

(1) Procedures. Operating and safety procedures shall be written and made available to all radiation machine operators. No person shall be permitted to operate radiation machines in any manner other than that specified in the procedures unless that person has obtained written approval of the radiation safety officer.

(2) Bypassing. No person shall bypass a safety device unless that person has obtained the approval of the radiation safety officer. When a safety device has been bypassed, a visible sign bearing the words "SAFETY DEVICE NOT WORKING," or words having a similar intent, shall be placed on the radiation source housing.

(3) Repair or modification of radiation machines. Except as specified in paragraph (2) of this subsection, no operation involving removal of covers, shielding materials, or tube housings, or modifications to shutters, collimators, or beam stops shall be performed without ensuring that the tube is off and will remain off until safe conditions have been restored. The main switch, rather than interlocks, shall be used for routine shutdown in preparation for repairs.

(h) [~~(g)~~] Personnel requirements.

(1) Instructions. No person shall be permitted to operate or maintain radiation machines unless such person has received instruction in and demonstrated competence in the following:

(A) identification of radiation hazards associated with the use of the radiation machine;

(B) radiation warning and safety devices incorporated into the radiation machine, or the reasons they have not been installed on certain pieces of equipment and the extra precautions required in such cases;

(C) operating and safety procedures for the radiation machine; and

[~~(D) symptoms of an acute localized exposure; and~~]

(D) [~~(E)~~] proper procedures for reporting an actual or suspected exposure in excess of the limits specified in §289.231 of this title.

(2) Instructions for bomb detection radiation machines. All personnel operating bomb detection radiation machines shall be trained in the set-up and operation of the radiation machine and in establishing a restricted area.

(3) [~~(2)~~] Individual [~~Personnel~~] monitoring. In addition to the requirements of §289.231(n)(1)(A) of this title, finger dosimetric devices shall be provided to and shall be used by:

(A) radiation machine workers using systems having an open-beam configuration and not equipped with a safety device; and

(B) personnel maintaining radiation machines if the maintenance procedures require the presence of a primary x-ray beam when any local component in the x-ray system is disassembled or removed.

(4) Records and documentation. Documentation of the requirements in paragraphs (1) - (3) of this subsection shall be maintained by the registrant for 10 years for inspection by the agency. In addition to complying with the requirements of this paragraph, records of individual monitoring results shall be maintained by the registrant in accordance with §289.231(dd) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

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Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §§289.251, 289.252, 289.258

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed amendments affect the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.251. Exemptions, General Licenses, and General License Acknowledgements.

(a) - (d) (No change.)

(e) Exemptions for radioactive material other than source material.

(1) Exempt concentrations.

(A) Except as provided in subparagraph (B) of this paragraph, any person is exempt from this section and §289.252 of this title if that person receives, possesses, uses, transfers, or acquires products or materials containing radioactive material in concentrations not in excess of those listed in subsection (m)(1) [~~(q)(1)~~] of this section.

(B) (No change.)

(2) Exempt quantities.

(A) Except as provided in subparagraph (C) of this paragraph, any person is exempt from these rules if that person receives, possesses, uses, transfers, or acquires radioactive material in individual quantities, each of which does not exceed the applicable quantity set forth in subsection (m)(2) [~~(q)(2)~~] of this section.

(B) - (C) (No change.)

(D) No person may, for purposes of commercial distribution, transfer radioactive material in quantities greater than the individual quantities set forth in subsection (m)(2) [~~(q)(2)~~] of this section, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt in accordance with this paragraph or equivalent regulations of the NRC, any agreement state, or any licensing state, except in accordance with a specific license issued by the NRC in accordance with Title 10, CFR, §32.18 or by the agency in accordance with §289.252(j) of this title, which states that the radioactive material may be transferred by the licensee to persons exempt in accordance with this paragraph or the equivalent regulations of the NRC, any agreement state, or any licensing state.

(E) The schedule of quantities set forth in subsection (m)(2) [~~(q)(2)~~] of this section applies only to radioactive materials distributed as exempt quantities in accordance with a specific license issued by the agency, another licensing state, or the commission. Subsection (m)(2) [~~(q)(2)~~] of this section does not apply to radioactive materials that have decayed from quantities not originally exempt and does not make such material, or the sources or devices in which the material is contained, exempt from the licensing requirements in this section or §289.252 of this title.

(3) Exempt items.

(A) Certain items containing radioactive material.

(i) Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, any person is exempt from this chapter if that person receives, possesses, uses, transfers, or acquires the following products:

(I) - (VII) (No change.)

(VIII) ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, a source of radioactive material not exceeding the applicable quantity set forth in subsection (m)(2) [~~(q)(2)~~] of this section or 0.05 µCi of americium-241; or

(IX) (No change.)

(ii) (No change.)

(B) - (D) (No change.)

(4) (No change.)

(f) General licenses. In addition to the requirements of this section, all general licenses, unless otherwise specified, are subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202(ww) and (xx) of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(1) (No change.)

(2) Modification, suspension, and revocation of a general license.

(A) - (C) (No change.)

(D) Except in cases in which the occupational and public health, [~~interest,~~] or safety requires otherwise, no general license shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the holder of the general license in writing and the holder of the general license shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(E) (No change.)

(3) (No change.)

(4) General licenses for radioactive material other than source material.

(A) - (G) (No change.)

(H) General license for certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.

(i) - (iii) (No change.)

(iv) Any person who receives, acquires, possesses, uses, or transfers radioactive material in a device in accordance with the general license in this subparagraph shall do the following:

(I) - (VI) (No change.)

(VII) immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the "on-off" mechanism, or indicator, or upon the detection of 185 [~~1.85~~] becquerels (0.005 µCi) or more of removable radioactive material. The device shall not be operated until it has been repaired by the manufacturer or other person holding a specific license from the agency, the NRC, an agreement state, or a licensing state to repair such devices. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device. A report, prepared in accordance with §289.202(xx) and (yy) of this title, containing a brief description of the event and the remedial action taken and in the case of detection of 185 [~~1.85 becquerels~~] (0.005 µCi) or more removable radioactive material or failure of, or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use shall be furnished to the agency within 30 days. Under these circumstances, the requirements in §289.202(ddd) of this title may be applicable, as determined by the agency on a case-by-case basis;

(VIII) (No change.)

(IX) transfer or dispose of the device containing radioactive material only by transfer to another general licensee as authorized in subclauses [~~subclause~~] (XII) and (XVI) of this clause or to a person authorized to receive the device by a specific license issued by the agency in accordance with §289.252(l) of this title, or an equivalent specific license issued by the NRC, an agreement state, or a licensing state, or as otherwise approved under subclause (XI) of this clause;

(X) furnish a report to the agency within 30 days after the transfer or export of a device to a specific licensee. The report must contain the following:

(-a-) identification of the device by manufacturer's (or initial transferor's) name, model and serial number;

(-b-) name, address, and license number of the person receiving the device; and

(-c-) date of the transfer.

(XI) - (XV) (No change.)

(XVI) not export the device containing radioactive material except in accordance with Title 10, CFR, Part 110.

(XVII) comply with the provisions of §289.202(ww) and (xx) of this title for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of §289.202 and §289.203 of this title.

(XVIII) respond to written requests from the agency to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the agency a written justification for the request.

(I) (No change.)

(J) The written instructions specified in subparagraph (H)(iv)(III)(-a-) and (-b-) of this paragraph [~~subparagraph (H)(iv)(III)(-a-) of this paragraph~~] shall be followed while performing the testing and the written instructions in subparagraph (H)(iv)(III)(-b-) of this paragraph shall be maintained for inspection by the agency.

(g) General license acknowledgements for radioactive material other than source material. In addition to the requirements of this section, all general license acknowledgement holders, unless otherwise specified, are subject to the requirements of §§289.201, 289.202(ww) and (xx), 289.204, 289.205, and 289.257 of this title.

(1) Persons possessing a general license for devices in accordance with subsection (f)(4)(H) of this section and being in the possession of radioactive material in devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, 37 MBq (1 mCi) of americium-241, or any transuranic (for example, element with atomic number greater than uranium (92)), based on the activity indicated on the label on the device, shall file an application for acknowledgement within 30 days of receipt, acquisition, or possession of such a device. The application shall be on a form prescribed by the agency to include the following information and any other information specifically requested by the agency:

(A) - (B) (No change.)

(C) name, title, and telephone number of the responsible person designated as a representative of the general licensee in accordance with subsection (f)(4)(H)(iv)(XIII) of this section [~~subparagraph (H)(iv)(XIII) of this paragraph~~];

(D) - (G) (No change.)

(2) (No change.)

(3) Persons in possession of a device meeting the criteria of paragraph (1) of this subsection shall respond annually to the General License Acknowledgement Self Evaluation Form provided by the agency. Response should be in accordance with the instructions on the form.

(h) - (i) (No change.)

(j) Expiration and termination of general license acknowledgement [~~and administrative renewal~~].

(1) [~~Effective September 1, 2004, the term of the general license acknowledgement is two years.~~] Each general license acknowledgement expires at the end of the day, in the month and year stated in the general license acknowledgement. [~~Upon payment of the fee required by §289.204 of this title and if the agency does not deny the renewal in accordance with subsection (f)(1) of this section, the general license acknowledgement will be administratively renewed.~~]

(2) Expiration of the general license acknowledgement does not relieve the holder of the general license acknowledgement of the requirements of this chapter.

~~[(3) If the holder of the general license acknowledgement does not pay the fee required by §289.204 of this title and the general license acknowledgement is not renewed, the holder of the general license acknowledgement shall:]~~

~~[(A) terminate use of all generally licensed devices; and]~~

[~~(B) submit to the agency a record of the disposition of the devices and if transferred, to whom it was transferred, within 30 days following the expiration date.~~]

[~~(k) Termination of general license acknowledgements.~~]

(3) [~~(1)~~] Each holder of a general license acknowledgement shall notify the agency immediately, in writing, and request termination of the general license acknowledgement when the holder of the general license acknowledgement decides to terminate all activities involving materials specified in the general license acknowledgement.

(4) No less than 30 days before the expiration date specified in a general license acknowledgement, the holder of the general license acknowledgement shall submit an application for general license acknowledgement renewal in accordance with subsection (k) of this section.

(5) [~~(2)~~] Each holder of a general license acknowledgement shall, no less than 30 days before vacating or relinquishing possession of control of premises that have been used as a place of storage or use of radioactive material as a result of general licensed activities, notify the agency in writing of intent to vacate. [~~and do the following:~~]

[~~(A) terminate use of radioactive material;~~]

[~~(B) dispose of radioactive material in accordance with this section and/or §289.202(ff) of this title; and~~]

[~~(C) pay any outstanding fees in accordance with §289.204 of this title.~~]

(6) If a holder of a general license acknowledgement does not submit an application for renewal in accordance with subsection (k) of this section, such person shall on or before the expiration date specified in the general license acknowledgement:

(A) terminate use of radioactive material; and

(B) dispose of radioactive material in accordance with this section and/or §289.202(ff).

(k) Renewal of general license acknowledgements.

(1) Applications for renewal of general license acknowledgements shall be filed in accordance with subsection (g)(1) or (f)(4)(G)(iv) of this section, as applicable.

(2) If a holder of a general license acknowledgement has properly filed a renewal application for the same activities at least 30 days before the expiration of the existing general license acknowledgement in accordance with this section, such existing general license acknowledgement shall not expire until the application has been finally determined by the agency.

(l) - (m) (No change.)

§289.252. Licensing of Radioactive Material.

(a) - (c) (No change.)

(d) Filing application for specific licenses. The agency may, at any time after the filing of the original application, require further statements in order to enable the agency to determine whether the application should be denied or the license should be issued.

(1) - (5) (No change.)

(6) Each applicant shall demonstrate to the agency that the applicant is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license. Each licensee shall demonstrate to the agency that it remains financially qualified to conduct the licensed activity before a license is renewed. Methods for demonstrating financial qualifications are specified in subsection (jj)(8) [~~(ii)(8)~~] of this section. The requirement for demonstration of financial qualification is separate from the requirement specified in subsection (gg) of this section for certain applicants or licensees to provide financial assurance.

(7) - (10) (No change.)

(e) (No change.)

(f) Radiation safety officer.

(1) - (2) (No change.)

(3) The specific duties of the RSO include, but are not limited to, the following:

(A) - (K) (No change.)

(L) to perform a physical [~~an~~] inventory of the radioactive sealed sources authorized for use on the license every six months and make and maintain records of the inventory of the radioactive sealed sources authorized for use on the license every six months, to include, but not be limited to the following:

(i) - (ii) (No change.)

(iii) activity(ies); [~~and~~]

(iv) date inventory is performed;[~~.~~]

(v) location;

(vi) unique identifying number or serial number; and

(vii) signature of person performing the inventory.

(M) - (N) (No change.)

(4) - (5) (No change.)

(g) - (n) (No change.)

(o) Specific licenses for the manufacture and commercial distribution of sealed sources or devices containing radioactive material for medical use. In addition to the requirements in subsection (e) of this section, a specific license to manufacture and commercially distribute sealed sources and devices containing radioactive material to persons licensed for use of sealed sources listed in §289.256(rr), §289.256(bbb) and §289.256(ddd) of this title [~~in the healing arts for use as a calibration or reference source~~] will be issued if the agency approves the following information submitted by the applicant:

(1) an evaluation of the radiation safety of each type of sealed source or device including the following:

(A) - (G) (No change.)

(H) a legend and methods for labeling sources and devices as to their radioactive content; [~~procedures for disposition of unwanted or unused radioactive material;~~]

(2) - (4) (No change.)

(p) - (q) (No change.)

(r) Specific licenses for the manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive materials for medical use.

(1) - (2) (No change.)

(3) A licensee described in paragraph (1)(A)(iii) of this subsection shall prepare radioactive drugs for medical use as described in §289.256 of this title with the following provisions:

(A) radioactive drugs shall be prepared by a nuclear pharmacist(s) designated in the application as the individual user(s) who has completed the training and experience requirements specified in §289.256 of this title; [the rules of the Texas State Board of Pharmacy, contained in Title 22, Texas Administrative Code, §291.52;]

(B) - (D) (No change.)

(4) (No change.)

(s) (No change.)

(t) Specific licenses for the processing of loose radioactive material for manufacture and commercial distribution. In addition to the requirements in subsection (e) of this section, a license to process loose radioactive material for manufacture and commercial distribution of radioactive material to persons authorized to possess such radioactive material in accordance with this chapter will be issued if the agency approves the following information submitted by the applicant:

(1) - (4) (No change.)

(5) documentation of training as specified in subsection (jj)(1) [(ii)(1)] of this section for all personnel who will be handling radioactive materials.

(u) Specific licenses for other manufacture and commercial distribution of radioactive material. In addition to the requirements in subsection (e) of this section, a license to manufacture and commercially distribute radioactive material to persons authorized to possess such radioactive material in accordance with these requirements will be issued if the agency approves the following information submitted by the applicant:

(1) - (3) (No change.)

(4) documentation of training as specified in subsection (jj)(1) [(ii)(1)] of this section for all personnel who will be handling radioactive material.

(v) - (w) (No change.)

(x) Specific terms and conditions of licenses.

(1) - (3) (No change.)

(4) The licensee shall notify the agency, in writing within 15 calendar days, of any of the following changes:

(A) name;

(B) mailing address; or

(C) RSO.

(5) [(4)] Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the licensee or its parent company, if the parent company is involved in the bankruptcy.

(6) [(5)] The notification in paragraph (4) of this subsection shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(7) [(6)] A copy of the petition for bankruptcy shall be submitted to the agency along with the written notification.

(8) [(7)] In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license, the agency may consider the technical competence and compliance history of an applicant or holder of a license. After an opportunity for a hearing, the agency shall deny an application for a license, an amendment to a license, or renewal of a license if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the license.

(y) Expiration and termination of licenses[,] and [administrative renewal;] decommissioning of sites and separate buildings or outdoor areas.

(1) Except as provided in paragraph (2) of this subsection and subsection (z)(2) of this section, each specific license expires at the end of the day, in the month and year stated in the license. Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

[(1) Effective September 1, 2004, the term of the specific license is two years. Except as provided in paragraph (3) of this subsection and subsection (z)(2) of this section, each specific license expires at the end of the day, in the month and year stated in the license. Except for subsection (z)(5) of this section, upon payment of the fee required by §289.204 of this title and if the agency does not deny the renewal in accordance with subsection (x)(7) of this section, the specific license will be administratively renewed. The requirements in this subsection are subject to the provisions of Government Code, §2001.054.]

[(2) If the fee is not paid and the license is not renewed in accordance with paragraph (1) of this subsection, the license expires, and the licensee is in violation of the rules and is subject to administrative penalties in accordance with §289.205 of this title.]

[(A) If the licensee pays the fee required by §289.204 of this title within 30 days after expiration of the license, the license will be reinstated and the licensee will not be required to file an application in accordance with subsection (d) of this section.]

[(B) If the licensee fails to pay the fee within 30 days after expiration of the license, the licensee shall file an application in accordance with subsection (d) of this section.]

(2) [(3)] Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(3) [(4)] All license provisions continue in effect beyond the expiration date, with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee shall:

(A) be limited to actions involving radioactive material that are related to decommissioning; and

(B) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements in §289.202(ddd) of this title.

(4) [(5)] Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building and/or outdoor area is suitable for release in accordance with §289.202(eee) of this title, or submit within 12 months of notification a decommissioning plan, if required by paragraph (7) [(8)] of this subsection, and begin decommissioning upon approval of that plan if:

(A) the license has expired or has been revoked in accordance with this subsection or subsection (dd) of this section;

(B) the licensee has decided to permanently cease principal activities, as defined in §289.201(b) of this title, at the entire site or in any separate building or outdoor area;

(C) no principal activities under the license have been conducted for a period of 24 months; or

(D) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with §289.202(eee) of this title.

(5) [~~(6)~~] Coincident with the notification required by paragraph (4) [~~(5)~~] of this subsection, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee in accordance with subsection (gg) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance shall be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (10)(E) [~~(11)(E)~~] of this subsection.

(6) [~~(7)~~] The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request shall be submitted no later than 30 days before notification in accordance with paragraph (4) [~~(5)~~] of this subsection. The schedule for decommissioning set forth in paragraph (4) [~~(5)~~] of this subsection may not commence until the agency has made a determination on the request.

(7) [~~(8)~~] A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(8) [~~(9)~~] The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (4) [~~(5)~~] of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(9) [~~(10)~~] The procedures listed in paragraph (7) [~~(8)~~] of this subsection may not be carried out prior to approval of the decommissioning plan.

(10) [~~(11)~~] The proposed decommissioning plan for the site or separate building or outdoor area shall include the following:

(A) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (15) of this subsection.

(11) [~~(12)~~] The proposed decommissioning plan will be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(12) [~~(13)~~] Except as provided in paragraph (14) [~~(15)~~] of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor areas as soon as practicable but no later than 24 months following the initiation of decommissioning.

(13) [~~(14)~~] Except as provided in paragraph (14) [~~(15)~~] of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(14) [~~(15)~~] The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the agency determines that the alternative is warranted by consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24 month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24 month period;

(C) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(D) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(E) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(15) [~~(16)~~] As the final step in decommissioning, the licensee shall do the following:

(A) certify the disposition of all licensed material, including accumulated wastes; and

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title. The licensee shall do the following, as appropriate:

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) for surfaces;

(III) μCi (MBq) per milliliter for water; and

(IV) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(ii) specify the manufacturer's name and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(16) [~~(17)~~] The agency will provide written notification to specific licensees, including former licensees with provisions continued in effect beyond the expiration date in accordance with paragraph (3) [~~(4)~~] of this subsection, that the provisions of the license are no longer binding. The agency will provide such notification when the agency determines that:

(A) radioactive material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title, or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title; and

(D) any outstanding fees in accordance with §289.204 of this title are paid and any outstanding notices of violations of this chapter or of license conditions are resolved.

(17) [~~(18)~~] Each licensee shall submit to the agency all records required by §289.202(nn)(2) of this title before the license is terminated.

(z) Renewal [~~Technical renewal~~] of licenses.

(1) Requests for [~~An application for a technical~~] renewal of specific licenses shall be filed in accordance with subsection (d)(1) - (3) and (5) - (7) of this section. [~~An application for a technical renewal of a specific license shall be filed by the date specified in the license. If the licensee fails to apply and pay the fee required by §289.204 of this title, the license expires and the licensee shall comply with the requirements of subsection (y) of this section.~~] In any application for renewal, the applicant may incorporate drawings by clear and specific reference (for example, title, date and unique number of drawing), if no modifications have been made since previously submitted.

(2) [~~In any case in which a licensee, prior to expiration of an existing license, has filed a request in proper form for a technical renewal or for a new license authorizing the same activities, such existing license shall not expire until the request has been finally determined by the agency.~~] In any case in which a licensee, not less [~~more~~] than 30 days prior to expiration of an existing license [~~after the expiration of an existing license~~], has filed a request [~~an application for technical renewal or~~] in proper form for renewal or for a new license authorizing the same activities [~~and paid the fee required by §289.204 of this title~~], such existing license shall not expire [~~the agency may reinstate the license and extend the expiration~~] until the request has been finally determined by the agency. In any case in which a licensee, not more than 90 days after the expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, the agency may reinstate the license and extend the expiration until the request has been finally determined by the agency. The requirements in this subsection are subject to the provisions of Government Code, §2001.054.

(3) An application for technical renewal of a license will be approved if the agency determines that the requirements of subsection (e) of this section have been satisfied.

[~~(4) When the date for administrative renewal in accordance with subsection (y)(1) of this section and the date for the technical renewal in accordance with paragraph (1) of this subsection occur at the same time, the specific license will be renewed if the fee required by §289.204 of this title is paid, the technical renewal is approved by the agency in accordance with paragraph (3) of this subsection, and the agency does not deny the renewal in accordance with subsection (x)(7) of this section.~~]

[~~(5) When the date for the administrative renewal in accordance with subsection (y)(1) of this section and the date for the technical renewal in accordance with paragraph (1) of this subsection occur at the same time, the specific license renewal may be denied by the agency if any one of the following conditions apply:~~]

[~~(A) the fee required by §289.204 of this title is not paid;~~]

[~~(B) the agency denies the renewal in accordance with subsection (x)(7) of this section; or~~]

[~~(C) the agency does not approve the technical renewal in accordance with paragraph (3) of this subsection.~~]

[~~(6) Expiration of the specific license does not relieve the former licensee of the requirements of this chapter.~~]

[~~(7) The requirements in this subsection are subject to the provisions of Government Code, §2001.054.~~]

(aa) - (ff) (No change.)

(gg) Financial assurance and record keeping for decommissioning.

(1) The applicant for a specific license or renewal of a specific license, or holder of a specific license, authorizing the possession and use of radioactive material shall submit and receive written authorization for a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license for the following situations:

(A) when unsealed radioactive material requested or authorized on the license, with a half-life greater than 120 days, is in quantities exceeding 10^5 times the applicable quantities set forth in subsection (jj)(2) [~~(ii)(2)~~] of this section; or

(B) when a combination of the unsealed radionuclides requested or authorized on the license, with a half-life greater than 120 days, results in the R of the radionuclides divided by 10^5 being greater than 1 (unity rule), where R is defined as the sum of the ratios

of the quantity of each radionuclide to the applicable value in subsection (jj)(2) [~~(ii)(2)~~] of this section.

(C) when sealed sources or plated foils requested or authorized on the license, with a half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in subsection (jj)(2) of this section (or when a combination of isotopes is involved if R, as defined in this subsection, divided by 10^{12} is greater than 1), shall submit a decommissioning funding plan as described in paragraph (4) of this subsection.

(2) (No change.)

(3) The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license and is determined as follows:

(A) $1,125,000 [~~$850,000~~] for quantities of material greater than 10^4 but less than or equal to 10^5 times the applicable quantities in subsection (jj)(2) [~~(ii)(2)~~] of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^4 is greater than 1 but R divided by 105 is less than or equal to 1.);

(B) $225,000 [~~$170,000~~] for quantities of material greater than 10^3 but less than or equal to 10^4 times the applicable quantities in subsection (jj)(2) [~~(ii)(2)~~] of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^3 is greater than 1 but R divided by 10^4 if less than or equal to 1); or

(C) $113,000 [~~$85,000~~] for quantities of material greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities in subsection (jj)(2) [~~(ii)(2)~~] of this section in sealed sources or plated foils. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^{10} is greater than 1, but R divided by 10^{12} is less than or equal to 1.)

(4) - (5) (No change.)

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods. The financial instrument obtained shall be continuous for the term of the license in a form prescribed by the agency. The applicant or licensee shall obtain written approval of the financial instrument or any amendment to it from the agency.

(A) (No change.)

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (jj)(3) [~~(ii)(3)~~] of this section. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (jj)(4) [~~(ii)(4)~~] of this section. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in subsection (jj)(5) [~~(ii)(5)~~] of this section. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in subsection (jj)(6) [~~(ii)(6)~~] of this section. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions.

(i) - (iii) (No change.)

(C) - (E) (No change.)

(7) - (8) (No change.)

(hh) Emergency plan for responding to a release.

(1) A new or renewal application for each specific license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in subsection (jj)(7) [~~(ii)(7)~~] of this section shall contain either:

(A) - (B) (No change.)

(2) One or more of the following factors may be used to support an evaluation submitted in accordance with paragraph (1)(A) of this subsection:

(A) - (B) (No change.)

(C) the release fraction in the respirable size range would be lower than the release fraction in subsection (jj)(7) [~~(ii)(7)~~] of this section due to the chemical or physical form of the material;

(D) (No change.)

(E) facility design or engineered safety features in the facility would cause the release fraction to be lower than that in subsection (jj)(7) [~~(ii)(7)~~] of this section;

(F) operating restrictions or procedures would prevent a release fraction as large as that in subsection (jj)(7) [~~(ii)(7)~~] of this section; or

(G) (No change.)

(3) - (4) (No change.)

(ii) Increased controls. Licensees possessing sources containing radioactive material, at any given time, in quantities greater than or equal to the quantities of concern listed in subsection (jj)(9) of this section shall:

(1) control access at all times to radioactive material and devices containing such radioactive material (devices) in quantities in accordance with subsection (jj)(9) of this section; and

(2) limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

(A) The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices.

(B) The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

(C) For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The

licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.

(D) Service providers shall be escorted unless determined to be trustworthy and reliable by an U.S. Nuclear Regulatory Commission (NRC) required background investigation as an employee of a manufacturing and distribution (M&D) licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the manufacturing and distribution licensee providing the service.

(E) The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

(3) Each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices in use or in storage. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the values listed in subsection (jj)(9) of this section.

(A) The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).

(B) The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Prearranged LLEA coordination is not required for temporary job sites.

(C) The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

(D) After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the NRC Operations Center at (301) 816-5100.

(E) The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

(4) In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed but are less than 100 times those listed in subsection (jj)(9) of this section, per consignment, the licensee shall:

(A) Use carriers which:

(i) use package tracking systems;

(ii) implement methods to assure trustworthiness and reliability of drivers;

(iii) maintain constant control and/or surveillance during transit; and

(iv) have the capability for immediate communication to summon appropriate response or assistance.

(B) Verify and document that the carrier employs the measures in subparagraph (A) of this paragraph;

(C) Contact the recipient to coordinate the expected arrival time of the shipment;

(D) Confirm receipt of the shipment; and

(E) Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or is missing, the licensee shall immediately notify the NRC Operations Center at (301) 816-5100. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the NRC Operations Center at (301) 816-5100.

(5) For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in subsection (jj)(9) of this section per consignment, the licensee shall:

(A) Notify the NRC Director, Office of Nuclear Material Safety and Safeguards U.S. Nuclear Regulatory Commission Washington, DC 20555, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.

(B) Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements in subparagraph (A) of this paragraph shall not apply to future shipments of licensed radioactive material that exceeds 100 times the quantities listed in subsection (jj)(9) of this section. The licensee shall implement the ASMs for the transportation of RAM QC.

(6) If a licensee employs an M&D licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of paragraph (5)(A) and (B) of this subsection shall not apply.

(7) If the licensee is to receive radioactive material greater than or equal to the quantities in subsection (jj)(9) of this section, per consignment, the licensee shall coordinate with the originator to:

(A) Establish an expected time of delivery; and

(B) Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.

(8) Each licensee who possesses mobile or portable devices containing radioactive material in quantities greater than or equal to the values listed in subsection (jj)(9) of this section, shall:

(A) For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(B) For mobile devices:

(i) that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(ii) that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

(C) For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

(9) The licensee shall retain documentation required by these increased controls for inspection by the agency for three years after they are no longer effective.

(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

(B) Each time the licensee revises the list of approved persons required by paragraph (2)(E) of this subsection, or the documented program required by paragraph (3) of this subsection, the licensee shall retain the previous documentation for three years after the revision.

(C) The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

(D) The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

(E) After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.

(10) Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.

(A) The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.

(B) The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:

(i) general performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure;

(ii) protection of sensitive information during use, storage, and transit;

(iii) preparation, identification or marking, and transmission;

(iv) access controls;

(v) destruction of documents;

(vi) use of automatic data processing systems; and

(vii) removal from the licensee's sensitive information category.

(jj) [~~(ii)~~] Appendices.

(1) Subjects to be included in training courses:

(A) fundamentals of radiation safety:

(i) characteristics of radiation;

(ii) units of radiation dose (rem) and activity of radioactivity (curie);

(iii) significance of radiation dose;

(I) radiation protection standards; and

(II) biological effects of radiation;

(iv) levels of radiation from sources of radiation;

(v) methods of controlling radiation dose;

(I) time;

(II) distance; and

(III) shielding;

(vi) radiation safety practices, including prevention of contamination and methods of decontamination; and

(vii) discussion of internal exposure pathways;

(B) radiation detection instrumentation to be used:

(i) radiation survey instruments:

(I) operation;

(II) calibration; and

(III) limitations;

(ii) survey techniques;

(iii) individual monitoring devices;

(C) equipment to be used:

(i) handling equipment and remote handling tools;

(ii) sources of radiation;

(iii) storage, control, disposal, and transport of equipment and sources of radiation;

(iv) operation and control of equipment; and

(v) maintenance of equipment;

(D) the requirements of pertinent federal and state regulations;

(E) the licensee's written operating, safety, and emergency procedures; and

(F) the licensee's record keeping procedures.

(2) Isotope quantities (for use in subsection (gg) of this section).
Figure: 25 TAC §289.252(jj)(2)
[~~Figure: 25 TAC §289.252(ii)(2)~~]

(3) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning

based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This paragraph establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(B) Financial test.

(i) To pass the financial test, the parent company shall meet the criteria of either subclause (I) or (II) of this clause.

(I) The parent company shall have:

(-a-) two of the following three ratios:

(-1-) a ratio of total liabilities to net worth less than 2.0;

(-2-) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and

(-3-) a ratio of current assets to current liabilities greater than 1.5;

(-b-) net working capital and tangible net worth each at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used.)

(II) The parent company shall have:

(-a-) a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(-b-) tangible net worth each at least six times the current decommissioning cost estimate for the total of all facilities or parts thereof (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if certification is used).

(ii) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(iii) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iv) If the parent company no longer meets the requirements of clause (i) of this subparagraph, the licensee shall send notice to the agency of intent to establish alternate financial assurance as specified in the agency's regulations. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(C) Parent company guarantee. The terms of a parent company guarantee that an applicant or licensee obtains shall provide that:

(i) the parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the agency, as evidenced by the return receipts;

(ii) if the licensee fails to provide alternate financial assurance as specified in the agency's rules within 90 days after receipt by the licensee and the agency of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee;

(iii) the parent company guarantee and financial test provisions shall remain in effect until the agency has terminated the license; and

(iv) if a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the agency. An acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(4) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes a financial test of subparagraph (B) of this paragraph. Subparagraph (B) of this paragraph establishes criteria for passing the financial test for the self guarantee and establishes the terms for a self guarantee.

(B) Financial test.

(i) To pass the financial test, a company shall meet all of the following criteria:

(I) tangible net worth at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self guaranteeing licensee and as parent-guarantor);

(II) assets located in the United States amounting to at least 90% of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor); and

(III) a current rating for its most recent bond issuance of AAA, AA, A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's.

(ii) To pass the financial test, a company shall meet all of the following additional criteria:

(I) the company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934.

(II) the company's independent certified public accountant shall have compared the data used by the company in the financial test that is derived from the independently audited year-end fi-

nancial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(III) after the initial financial test, the company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iii) If the licensee no longer meets the criteria of clause (i) of this subparagraph, the licensee shall send immediate notice to the agency of its intent to establish alternate financial assurance as specified in the agency's rules within 120 days of such notice.

(C) Company self guarantee. The terms of a self guarantee that an applicant or licensee furnishes shall provide that:

(i) the company guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the agency, as evidenced by the return receipt;

(ii) the licensee shall provide alternate financial assurance as specified in the agency's rules within 90 days following receipt by the agency of a notice of cancellation of the guarantee;

(iii) the guarantee and financial test provisions shall remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee;

(iv) the licensee will promptly forward to the agency and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission in accordance with the requirements of the Securities and Exchange Act of 1934, §13;

(v) if, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the agency within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the criteria of subparagraph (B)(i) of this paragraph; and

(vi) the applicant or licensee shall provide to the agency a written guarantee (a written commitment by a corporate officer) that states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(5) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning by commercial companies that have no outstanding rated bonds.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of subparagraph (B) of this paragraph. The terms of the self-guarantee are in subparagraph (C) of this paragraph. This paragraph establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

(B) Financial test.

(i) To pass the financial test a company shall meet the following criteria:

(I) tangible net worth greater than $10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(II) assets located in the United States amounting to at least 90% of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(III) a ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5.

(ii) In addition, to pass the financial test, a company shall meet all of the following requirements:

(I) the company's independent certified public accountant shall have compared the data used by the company in the financial test, that is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test;

(II) after the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year; and

(III) if the licensee no longer meets the requirements of subparagraph (B)(i) of this paragraph, the licensee shall send notice to the agency of intent to establish alternative financial assurance as specified in the agency's rules. The notice shall be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee shall provide alternative financial assurance within 120 days after the end of such fiscal year.

(C) Company self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide the following.

(i) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the agency. Cancellation may not occur until an alternative financial assurance mechanism is in place.

(ii) The licensee shall provide alternative financial assurance as specified in the agency rules within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

(iv) The applicant or licensee shall provide to the agency a written guarantee (a written commitment by a corporate officer) that states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(6) Criteria relating to use of financial tests and self-guarantees for providing reasonable assurance of funds for decommissioning by nonprofit entities, such as colleges, universities, and nonprofit hospitals.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of subparagraph (B) of this paragraph. The terms of the self- guarantee are in subparagraph (C) of this paragraph. This paragraph establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

(B) Financial test.

(i) To pass the financial test, a college or university shall meet the criteria of subclause (I) or (II) of this clause. The college or university shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's.

(II) for applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least $50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

(ii) To pass the financial test, a hospital shall meet the criteria in subclause (I) or (II) of this clause. The hospital shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's;

(II) for applicants or licensees that do not issue bonds, all the following tests shall be met:

(-a-) (total revenues less total expenditures) divided by total revenues shall be equal to or greater than 0.04;

(-b-) long term debt divided by net fixed assets shall be less than or equal to 0.67;

(-c-) (current assets and depreciation fund) divided by current liabilities shall be greater than or equal to 2.55; and

(-d-) operating revenues shall be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing license.

(iii) In addition, to pass the financial test, a licensee shall meet all the following requirements:

(I) the licensee's independent certified public accountant shall have compared the data used by the licensee in the financial test that is required to be derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test;

(II) after the initial financial test, the licensee shall repeat passage of the test within 90 days after the close of each succeeding fiscal year;

(III) if the licensee no longer meets the requirements of subparagraph (A) of this paragraph, the licensee shall send notice to the agency of its intent to establish alternative financial assurance as specified in the agency's rules. The notice shall be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(C) Self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide the following:

(i) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the agency. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

(ii) The licensee shall provide alternative financial assurance as specified in the agency's regulations within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

(iv) The applicant or licensee shall provide to the agency a written guarantee (a written commitment by a corporate officer or officer of the institution) that states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of the fact to the agency within 20 days after publication of the change by the rating service.

(7) Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release. The following table contains quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.

Figure: 25 TAC §289.252(jj)(7)

[~~Figure:~~ ~~25 TAC §289.252(ii)(7)~~]

(8) Requirements for demonstrating financial qualifications.

(A) If an applicant or licensee is not required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall demonstrate financial qualification by submitting attestation that the applicant or licensee is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license.

(B) If an applicant or licensee is required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall:

(i) submit one of the following:

(I) the bonding company report or equivalent (from which information can be obtained to calculate a ratios in clause (ii) of this subparagraph) that was used to obtain the financial assurance instrument used to meet the financial assurance requirement specified in subsection (gg) of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial assurance specified in subsection (gg) of this section, the applicant or licensee shall demonstrate financial qualification by one of the methods specified in subclause (II) or (III) of this clause;

(II) SEC documentation (from which information can be obtained to calculate a ratio as described in clause (ii) of this subparagraph, if the applicant or licensee is a publicly-held company); or

(III) a self-test (for example, an annual audit report certifying a company's assets and liabilities and resulting ratio as described in clause (ii) of this subparagraph or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues).

(ii) declare its Standard Industry Classification (SIC) code. Several companies publish lists, on an annual basis, of acceptable assets-to liabilities (assets divided by liabilities) ratio ranges for each type of SIC code. If an applicant or licensee submits documentation of its current assets and current liabilities or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues, and the resulting ratio falls within an acceptable range as published by generally recognized companies (for example, Almanac of Business and Industrial Financial Ratios, Industry NORM and Key Business Ratios, Dun & Bradstreet Industry publications, and Manufacturing USA: Industry Analyses, Statistics, and Leading Companies), the agency will consider that applicant or licensee financially qualified to conduct the requested or licensed activity.

(C) If the applicant or licensee is a state or local government entity, a statement of such will suffice as demonstration that the government entity is financially qualified to conduct the requested or licensed activities.

(D) The agency will consider other types of documentation if that documentation provides an equivalent measure of assurance of the applicant's or licensee's financial qualifications as found in subparagraphs (A) and (B) of this paragraph.

(9) Radionuclide quantities of concern. The following methods shall be used to determine which sources of radioactive material require increased controls (ICs):

(A) include any single source equal to or greater than the quantity of concern;

(B) include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern;

(C) for combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: ((amount of radionuclide A) / (quantity of concern of radionuclide A)) + ((amount of radionuclide B) / (quantity of concern of radionuclide B)) + etc.....> 1; and

(D) quantities of radioactive materials used to determine quantities of concern. The following table contains quantities of radioactive materials to be used in determining a quantity of concern. Figure: 25 TAC §289.252(jj)(9)(D)

§289.258. Licensing and Radiation Safety Requirements for Irradiators.

(a) - (e) (No change.)

(f) Start of construction. The applicant may not begin construction of a new irradiator prior to the submission to the agency of both an application for a license for the irradiator and the fee required by §289.204 of this title. As used in this section, the term "construction" includes the construction of any portion of the permanent irradiator structure on the site but does not include: engineering and design work; purchase of a site; site surveys or soil testing; site preparation; site excavation; construction of warehouse or auxiliary structures; and other similar tasks. Any construction activities undertaken prior to the issuance of a license are entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of the Texas Radiation Control Act (Act), rules, and orders issued in accordance with [~~under~~] the Act.

(g) - (p) (No change.)

(q) Design requirements for irradiators. The following are design requirements for irradiators that have construction beginning after August 1, 1996.

(1) - (4) (No change.)

(5) Radiation monitors. For all irradiators, the licensee shall evaluate the location and sensitivity of the monitor to detect sources carried by the product conveyor system as required by subsection (l)(1) of this section. The licensee shall verify that the product conveyor is designed to stop before a source on the product conveyor would cause a radiation overexposure to any person. For pool irradiators, if the licensee uses radiation monitors to detect contamination in accordance with [~~under~~] subsection (w)(2) of this section, the licensee shall verify that the design of radiation monitoring systems to detect pool contamination includes sensitive detectors located close to where contamination is likely to concentrate.

(6) - (11) (No change.)

(r) - (t) (No change.)

(u) Personnel monitoring.

(1) Irradiator operators shall wear an individual monitoring device that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor while operating a panoramic irradiator or while in the area around the pool of an underwater irradiator. The personnel dosimeter processor must be accredited for high-energy photons in the normal and accident dose ranges (see §289.202(p)(3) of this title). Each personnel dosimeter must be assigned to and worn by only one individual. Film badges must be processed at least monthly, and other personnel dosimeters must be processed at least quarterly. [~~Irradiator operators shall wear either a film badge, a thermoluminescent dosimeter (TLD), or optically stimulated luminescence device (OSL) while operating a panoramic irradiator or while in the area around the pool of an underwater irradiator. The film badge, TLD, or OSL processor shall be accredited by the National Voluntary Laboratory Accreditation Program for high energy photons in the normal and accident dose ranges (see §289.202(p)(3) of this title). Each film badge. TLD, or OSL shall be assigned to and worn by only one individual. Film badges shall be replaced at an interval not to exceed monthly and TLDs or OSLs shall be replaced at an interval not to exceed three months.~~] After replacement, each film badge, a thermoluminescent dosimeter (TLD), or optically stimulated luminescence device (OSL) shall be returned to the supplier for processing within 14 calendar days of the exchange date specified by the personnel monitoring supplier or as soon as practicable. In circumstances that make it impossible to return each film badge, TLD, or OSL within 14 calendar

days, such circumstances shall be documented and available for review by the agency.

(2) (No change.)

(v) - (cc) (No change.)

(dd) Reports.

(1) In addition to the reporting requirements in other sections of this title, the licensee shall report the following events if not reported in accordance with [~~under~~] other sections of this title:

(A) - (J) (No change.)

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706078
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 460. MISCELLANEOUS

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) proposes the repeal of 25 Texas Administrative Code (TAC) Chapter 460, Miscellaneous, in its entirety. Specifically, the department proposes the repeal of §§460.11 - 460.29, 460.31 - 460.35, 460.37, 460.38, 460.40, 460.45, 460.51 - 460.67, 460.101, 460.102, and 460.103 - 460.105, concerning miscellaneous rules from the legacy agencies that were consolidated into the department by Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292).

BACKGROUND AND PURPOSE

The repeals are necessary to eliminate duplication and to recognize the effect of House Bill 2292 on department rules. When the department's legacy agencies Texas Department of Health (TDH), the mental health division of the Texas Department of Mental Health and Mental Retardation (TDMHMR), the Texas Commission on Alcohol and Drug Abuse (TCADA), and the Texas Health Care Information Council (THCIC) were consolidated into the department, 25 TAC Part 1, was designated as the location for all department rules. Chapter 460 was designated for rules from the department's legacy agencies that did not need to be retained. The rules in Chapter 460 concern legacy agency powers and duties that transferred to the commission through House Bill 2292, were duplicative of the law establishing the department or other law applicable to the department, or were expected to be established by department policy rather than by rule. The rules in Chapter 460 were transferred there in 2004 with the intent of eventual repeal.

SECTION-BY-SECTION SUMMARY

The rules in Chapter 460, Subchapter A, Divisions 2 - 4 are legacy TDMHMR rules. Repeal of Division 2, §§460.11 - 460.29, Fraud and Abuse and Recovery of Benefits, is necessary because powers and duties concerning Medicaid fraud and abuse investigation and recovery were transferred from the legacy agencies to the commission, Office of Inspector General (OIG), on September 1, 2004, pursuant to House Bill 2292. Some of the sections in Division 2 are internal policies and procedures that do not need to be in rules. The sections concerning grounds for sanctions against providers, grounds for further referrals for administrative or judicial action, and the recovery of overpayments are set out in the contracts with providers and in the OIG rules. The OIG rules, which were adopted effective January 9, 2005, are located in the 1 TAC Part 15, Chapter 371.

Repeal of Division 3, §§460.31 - 460.35, 460.37, 460.38, 460.40, and 460.45, Interagency Agreements, is necessary because those legacy TDMHMR rules are duplicative of department rules or policies. The sections in Division 3 all were transferred effective September 1, 2004, from TAC, Title 25, Chapter 411 to Chapter 460. Section 460.31, Purpose, §460.32, Application, and §460.33, Definitions, are unnecessary because they refer to the legacy agency TDMHMR, which no longer exists. Section 460.34, concerning Memorandum of Understanding: Provision, Regulation, and Funding of Services in Hospitals and Long-Term Care Facilities, is duplicative because a rule adopting this memorandum of understanding (MOU) is already found at 25 TAC §111.2. State law requires the MOU to be adopted by rule. Section 460.35, concerning Memorandum of Understanding: Coordination of Services to Disabled Persons, is duplicative because a rule adopting this MOU is already found at 25 TAC §1.121. State law requires the MOU to be adopted by rule. Section 460.37, concerning Memorandum of Understanding: Coordination of Delivery of Mental Health and Mental Retardation Services to Hearing-Impaired or Deaf Persons, is duplicative because a rule adopting this MOU is already found at 25 TAC §37.193. State law does not require the MOU to be adopted by rule. Section 460.38, concerning Memorandum of Understanding: Coordination of Exchange and Distribution of Public Awareness Information, is duplicative because a rule adopting this MOU is already found at 25 TAC §1.101. State law requires the MOU to be adopted by rule. Section 460.40, concerning Training Requirements for Identifying Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities is duplicative because department rules adopting this MOU or incorporating its requirements are already found at 25 TAC §§133.47, 134.46, 411.490, 411.641, and 448.603. Section 460.45, Distribution, is duplicative because the distribution requirements for the MOUs are found in internal department policies.

Repeal of Division 4, §§460.51 - 460.67, Internal Audits and Investigations, is necessary because the department's internal and external audit powers and duties reside in policy rather than in rule. The Texas Internal Auditing Act, found in Texas Government Code, Chapter 2102, does not require agencies to adopt rules for internal auditing practices.

Repeal of the rules in Chapter 460, Subchapter B, §460.101 and §460.102, Procurement, and Subchapter C, §§460.103 - 460.105, Miscellaneous Provisions, is necessary because the sections in both subchapters are legacy TCADA rules concerning powers and duties which either were transferred to the commission in House Bill 2292, exist elsewhere in state law or department or commission rules, reside in department policy rather than in rule, or refer to legacy agency TCADA. Section 460.101,

Procurement, and §460.102, Procurement Protests, are redundant because they are part of the requirements placed on health and human services agencies by state law at Texas Government Code, §2155.144, Procurements by Health and Human Services Agencies; commission procurement rules found in 1 TAC Chapter 391; state law and Texas Building and Procurement Commission rules concerning historically underutilized businesses (HUB); and current department rules concerning HUBs at 25 TAC §1.171. Sections 460.103 - 460.105 are rules specific to TCADA, which no longer exists.

FISCAL NOTE

Linda S. Wiegman, Deputy General Counsel, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local governments as a result of repealing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Wiegman has also determined that there will be no effect on small businesses or micro-businesses as a result of the proposed repeal. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices since the rules set out requirements for the department, not for such businesses. There are no anticipated economic costs to persons as a result of the proposed repeal. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Wiegman has also determined that for each year of the first five years the proposed repeal is in effect, the public will benefit from adoption of the repeal. The public benefit anticipated as a result of the proposed repeal is compliance with House Bill 2292 and to eliminate confusion concerning the department's rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Sara Richardson, Office of General Counsel, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6961, or by e-mail to sara.richardson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed repeal has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION
DIVISION 2. FRAUD AND ABUSE AND RECOVERY OF BENEFITS

25 TAC §§460.11 - 460.29

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§460.11. Department Responsibility for Minimizing Fraud and Abuse.

§460.12. Confidentiality of Fraud or Abuse Investigation Records.

§460.13. Statutory Bases.

§460.14. Department Responsibilities in Relation to Provider Fraud and Abuse.

§460.15. Grounds for Fraud Referral and Administrative Sanction.

§460.16. Administrative Sanctions/Actions, Restitution, and Recoupment.

§460.17. Definitions.

§460.18. Administrative Sanctions and Actions.

§460.19. Scope of Sanction.

§460.20. Imposing a Sanction.

§460.21. Notice of Adverse Action.

§460.22. Informing Other Interested Parties.

§460.23. Provider Education.

§460.24. Request for Reinstatement.

§460.25. Obligation of Health Care Practitioners and Providers.

§460.26. Department Responsibility for Recovery of Funds.

§460.27. Recovery from Providers.

§460.28. Recovery When Fraud Is Involved.

§460.29. Provider Re-enrollment or Provider Contract or Agreement Modification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705965
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 458-7111 x6972

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DIVISION 3. INTERAGENCY AGREEMENTS

25 TAC §§460.31 - 460.35, 460.37, 460.38, 460.40, 460.45

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§460.31. Purpose.

§460.32. Application.

§460.33. Definitions.

§460.34. Memorandum of Understanding: Provision, Regulation, and Funding of Services in Hospitals and Long-Term Care Facilities.

§460.35. Memorandum of Understanding: Coordination of Services to Disabled Persons.

§460.37. Memorandum of Understanding: Coordination of Delivery of Mental Health and Mental Retardation Services to Hearing-Impaired or Deaf Persons.

§460.38. Memorandum of Understanding: Coordination of Exchange and Distribution of Public Awareness Information.

§460.40. Training Requirements for Identifying Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities.

§460.45. Distribution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
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DIVISION 4. INTERNAL AUDITS AND INVESTIGATIONS

25 TAC §§460.51 - 460.67

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§460.51. Purpose.

§460.52. Application.

§460.53. Definitions.

§460.54. Office of Internal Audit Authority and Function.

§460.55. Responsibilities of the Audit Committee Chairman and the TDMHMR Board.

§460.56. Responsibilities of the Director.

§460.57. Access to Records.

§460.58. Standards of Conduct.

§460.59. Standards for Conducting Audits and Investigations.

§460.60. Scope of Audit Work.

§460.61. Exit Conference Procedures for Audits.

§460.62. Responses to Audit Findings.

§460.63. Final Audit Report Distribution.

§460.64. Implementing Audit Recommendations.

§460.65. Investigating Alleged Fraud, Misconduct, or Other Wrongdoing.

§460.66. References.

§460.67. Distribution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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SUBCHAPTER B. PROCUREMENT

25 TAC §460.101, §460.102

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§460.101. Procurement.

§460.102. Procurement Protests.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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SUBCHAPTER C. MISCELLANEOUS PROVISIONS

25 TAC §§460.103 - 460.105

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§460.103. Public Comment and Requests.

§460.104. Approval Authority.

§460.105. Training and Education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

SUBCHAPTER D. HEALTH GROUP COOPERATIVES

28 TAC §26.402, §26.404

The Texas Department of Insurance proposes amendments to §26.402 and §26.404, concerning the establishment of, and provision of health benefit plan coverage to, health group cooperatives pursuant to the Insurance Code Chapter 1501. The proposed amendments implement Senate Bill (SB) 1255, 80th Legislature, Regular Session, which revised the standards by which carriers provide group health benefit plan coverage to health group cooperatives comprised of small employers, large employers, or both small and large employers. SB 1255 amended §1501.0581 to provide that a health group cooperative may be composed of small employers, large employers, or both small and large employers. It further amended §1501.0581 by adding subsection (a-1) to provide that health group cooperative membership may be restricted to small and large employers within a single industry grouping as defined by the most recent edition of the United States Census Bureau's North American Industry Classification System. SB 1255 also amended §1501.063 to provide that a health group cooperative composed only of small employers and that has not made the election described by §1501.0581(o)(1) in accordance with subsection (p) of that section, or a health group cooperative that is composed of both small and large employers, may be treated in the same manner as a large employer for purposes of the Insurance Code Chapter 1501.

The proposed amendments to §26.402 make changes to provisions addressing authorized membership of a health group cooperative and amend subsections (a) and (c) to conform the subsections to the Insurance Code §1501.0581(a) - (c) as amended by SB 1255. The proposed amendments to §26.402 add new subsection (e), which provides that a health group cooperative may restrict its membership to small and large employers within a single industry grouping as defined by the most recent edition

of the United States Census Bureau's North American Industry Classification System, and re-designates subsequent subsections accordingly.

The proposed amendment to §26.404 provides that a health group cooperative composed only of small employers and that has not made the election to limit participation in the cooperative to 50 eligible employees as described by §1501.0581(o)(1) and in accordance with subsection (p) of that section, or a health group cooperative that is composed of both small and large employers, may be treated in the same manner as a large employer for purposes of the Insurance Code Chapter 1501.

FISCAL NOTE. Jennifer Ahrens, Senior Associate Commissioner of Life, Health, and Licensing, has determined that for each year of the first five years the proposed amendments to §26.402 and §26.404 will be in effect there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the rules. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Ahrens has determined that for each year of the first five years the amendments to the sections are in effect, the public benefit anticipated as a result of the proposed amendments to the sections will be Department rules that are consistent with the Insurance Code §1501.0581 and §1501.063, as amended by SB 1255, and that will help facilitate the creation of health group cooperatives, making employer group coverage more affordable and accessible than it might otherwise be if the employers were purchasing the coverage individually. The proposed amendments, as part of a regulatory effort to encourage employers to continue to provide health coverage for their employees, may also result in coverage for previously uninsured employees. Any costs to persons required to comply with these proposed amendments for each year of the first five years the proposed amendments would be in effect are the result of the enactment of SB 1255 and not the result of the adoption, enforcement, or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In conjunction with the Government Code §2006.002(c), the Department has determined that the proposed amendments to §26.402 and §26.404 concerning the establishment of, and provision of health benefit plan coverage to, health group cooperatives will not have an adverse economic effect on small businesses or micro businesses that are required to comply with the proposal. Because the proposal does not impose any new requirements or costs with which businesses, regardless of size, must comply, any costs to persons required to comply with these proposed amendments are the result of the enactment of SB 1255, and not the result of the adoption, enforcement, or administration of the proposed amendments. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 7, 2008 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jennifer Ahrens, Senior Associate Commissioner, Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code §§1501.010, 1501.058, and 36.001. Section 1501.010 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Chapter 1501. Section 1501.058 requires compliance with federal laws applicable to cooperatives and health benefit plans issued through cooperatives, to the extent required by state law or rules adopted by the Commissioner. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §1501.0581 and §1501.063.

§26.402. Membership of Health Group Cooperatives.

(a) The membership of a health group cooperative may consist of only [~~of~~] small employers, [~~or~~] only [~~of~~] large employers, or [~~but may not consist of~~] both small and large employers.

(b) (No change.)

(c) Subject to the requirements of Insurance Code §1501.101, and the limitations [~~limitation~~] identified pursuant to subsections [~~subsection~~] (d) and (e) of this section, a health group cooperative:

(1) shall allow any small employer to join a health group cooperative that consists of only small employers or both small and large employers and, during the initial and annual open enrollment periods, enroll in health benefit plan coverage; and

(2) may allow a large employer to join the [~~a~~] health group cooperative [~~that consists of only large employers~~] and, during the initial enrollment and annual open enrollment periods, enroll in health benefit plan coverage.

(d) (No change.)

(e) A health group cooperative may restrict its membership to small and large employers within a single industry grouping as defined by the most recent edition of the United States Census Bureau's North American Industry Classification System.

(f) [~~(e)~~] A health group cooperative may not use risk characteristics of an employer or employee to restrict or qualify membership in the health group cooperative.

(g) [~~(f)~~] An employer's participation in a health group cooperative is voluntary, but an employer electing to participate in a health group cooperative must, through a contract with the health group cooperative, commit to purchasing coverage through the health group cooperative for two years, except as provided for in subsection (h) [~~(g)~~] of this section.

(h) [~~(g)~~] A contract between an employer and a health group cooperative must allow an employer to terminate without penalty its health benefit plan coverage with a health group cooperative before the end of the two year minimum contractual period required by subsection (g) [~~(f)~~] of this section if it can demonstrate to the health group cooperative that continuing to purchase coverage through the cooperative would be a financial hardship in accordance with subsection (i) [~~(h)~~] of this section.

(i) [~~(h)~~] The contract between an employer and a health group cooperative may define what constitutes a financial hardship for the purposes of subsection (h) [~~(g)~~] of this section. If the contract does not define the term, an employer may demonstrate financial hardship if it can show that at the end of the immediately preceding fiscal quarter, or upon receipt of notice of a rate increase, the premium cost to the employer, as a percentage of the employer's gross receipts, increased by a factor of at least .50.

§26.404. Health Group Cooperative's Status as Employer.

(a) Except as provided by subsection (b) of this section, a health group cooperative may be treated in the same manner as [~~is considered~~] a large employer for all purposes of Insurance Code Chapter 1501 and this chapter.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706053
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 463-6327

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CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §34.716, §34.726

The Texas Department of Insurance proposes amendments to §34.716, concerning the inspection, test and maintenance service of certain fire protection sprinkler systems, and new §34.726, concerning the establishment of the Fire Sprinkler Advisory Council to advise the State Fire Marshal regarding practices in the fire protection sprinkler system industry and the rules necessary to implement and administer Article 5.43-3 of the Insurance Code. Article 5.43-3 §6 is adopted as Insurance Code §6003.101 and §6003.102 in the nonsubstantive revision of the Insurance Code, 80th Legislature, House Bill 2636, effective April 1, 2009.

The proposed amendment to §34.716 is necessary to extend the deadline from January 1, 2008, to January 1, 2009, as the date upon which an individual, performing the inspection, test and maintenance on a fire protection sprinkler system, except a system for a one- and two-family dwelling or an underground fire main, must hold an RME-General Inspector or RME-General license. The proposed extension, recommended by the Texas Fire Sprinkler Contractor's Association and other registered fire sprinkler firms, is necessary because a sufficient number of individuals will not be licensed by the date currently specified in the rule. The time frame of one year and nine months allowed in the initial rule proved insufficient because the third party, administering the required test to obtain the license, only offered the test four times a year in twelve locations in Texas and restricted applicants from retaking the test for six months after failure of any part. Also some applicants to take the test were refused because of insufficient space at some test locations. In addition the non-sprinkler sections of the test proved challenging and training classes, sponsored by the sprinkler trade association, were only recently conducted to assist the applicants to study these sections. Without the proposed extension for the requirement that only individuals holding a current RME-General Inspector or RME-General license may perform the inspection, test and maintenance on certain fire protection sprinkler systems, only a few individuals will be authorized to conduct these inspections. Currently, no special authorization is required. The proposed extension will result in the uninterrupted regular inspection and testing of the fire sprinkler systems in buildings until a sufficient number of individuals are issued a current RME-General Inspector or RME-General license.

Proposed new §34.726 is necessary to establish a Fire Sprinkler Advisory Council pursuant to the Insurance Code Article 5.43-3, §6 and the Government Code Chapter 2110. Government Code §§2110.0012, 2110.005, and 2110.008 require state agencies to adopt rules to establish a state agency advisory council and to specify the advisory council's purpose, tasks, reporting requirements, and duration. Proposed new §34.726(a) states the purpose and scope of the proposed section. Proposed new §34.726(b) creates the Fire Sprinkler Advisory Council. Proposed new §34.726(c) outlines the purpose and tasks of the council. Proposed new §34.726(d) specifies the membership composition and terms. Proposed new §34.726(e) specifies the reporting requirements. Proposed new §34.726(f) provides for a duration of eight years from the effective the date of the adoption of the new section unless abolished earlier or extended to a later date by the Commissioner of Insurance.

FISCAL NOTE. Paul Maldonado, State Fire Marshal, has determined that for each year of the first five years the proposed amendments to §34.716 and the proposed new §34.726 are in effect, there will be no fiscal implications to state and local governments as a result of the enforcement or administration of the proposed amendments and the new section. There will be no measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Maldonado has determined that for each year of the first five years the proposed amendments to §34.716 is in effect, the anticipated public benefit will be the uninterrupted regular inspection and testing of the fire sprinkler systems in buildings that will ensure the safety and protection of the building occupants. There are no anticipated costs for persons or entities required to comply with the proposed amendment because the extension of the deadline date does not impose any additional requirement and does not require any immediate action or a change in an individual's or an entity's existing procedures.

Mr. Maldonado has determined that for each year of the first five years the proposed new §34.726 is in effect, the anticipated public benefit will be agency compliance with the Government Code Chapter 2011 regulating state agency advisory committees and the continuation of the operation of the Fire Sprinkler

Advisory Council to assist the State Fire Marshal by advising on practices in the fire protection sprinkler system industry and the rules necessary to implement and administer statutes regulating fire protection sprinkler systems and by making recommendations regarding forms and procedures and registration certificates and licenses; and to assist the Commissioner of Insurance by periodically reviewing rules implementing Article 5.43-3 of the Insurance Code and recommending changes in the rules. The proposed new section will also provide notice to interested parties and members of the public of the advisory council's purpose, duties, and reporting requirements. There are no persons required to comply with the proposed new section because participation on the advisory committee is voluntary, and therefore, there are no costs for any person required to comply with this section. Although participation on the advisory committee is voluntary, committee members who must travel to attend meetings will incur some out-of-pocket costs that will not be reimbursed by the Department. These costs will vary depending on how far the member must travel to attend meetings, what type of transportation is used, whether lodging is needed, and what choice of lodging is made.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that the proposed amendments to §34.716, relating to the extension of the deadline date to obtain a license to perform the inspection, test, and maintenance on a fire protection sprinkler system will not have an adverse economic effect on small and micro businesses because the extension of the deadline date does not impose any additional requirement and does not require any immediate action or a change in an individual's or an entity's existing procedures. The Department has determined that proposed new §34.726, relating to an advisory council, will not have an adverse economic effect on small and micro businesses because participation on the advisory committee is voluntary, and a representative of a small business or micro business can opt to participate or not participate based on the representative's analysis of estimated costs for travel and lodging. In accordance with the Government Code §2006.002(c), the Department has, therefore, determined that the proposed amendments to §34.716 and proposed new §34.726 do not require a regulatory flexibility analysis because the proposals will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 14, 2008 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Paul Maldonado, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments to §34.716 and new §34.726 are proposed under the Government Code §2110.005 and §2110.008 and the Insurance Code Article 5.43-3 §6 and §3(a), and §36.001. The Government Code §2110.005 requires a state agency that is advised by an advisory committee to adopt rules that state the purpose and tasks of the committee and that describe the manner in which the committee will report to the agency. Section 2110.008(b) of the Government Code provides that unless a state agency designates a different date for automatic abolition of the committee, the committee is automatically abolished on the later of September 1, 2005 or the fourth anniversary of the date of its creation. Section 2110.008(a) provides that a state agency that has established an advisory committee may designate the date on which the committee will automatically be abolished, that the designation must be by rule, and that the committee may continue in existence after that date only if the agency amends the rule to provide for a different abolishment date. The Insurance Code Article 5.43-3 §6 specifies the duties and composition of the advisory council, and provides that the State Firemen's and Fire Marshals' Association of Texas may, on request by the Commissioner, recommend a volunteer fire fighter for appointment to the advisory council. The Insurance Code Article 5.43-3 §3(a) authorizes the Commissioner to adopt rules as necessary to administer Article 5.43-3. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Article 5.43-3 and Government Code Chapter 2110.

§34.716. Installation, Maintenance, and Service.

(a) - (b) (No change.)

(c) Service, maintenance, or testing, when conducted by someone other than an owner, must be conducted by a registered firm and in compliance with the appropriate adopted standards. After January 1, 2009 [~~January 1, 2008~~], the inspection, test and maintenance service of a fire protection sprinkler system, except a one- and two-family dwelling or an underground fire main, must be performed by an individual holding a current RME-General Inspector or RME-General license. A visual inspection not accompanied by service, maintenance, testing, or certification does not require a certificate of registration.

(d) - (i) (No change.)

§34.726. Advisory Council.

(a) Purpose and Scope of this Section. Adopted pursuant to the Government Code Chapter 2110, which governs State Agency Advisory Committees, the purpose of this section is to establish the Fire Sprinkler Advisory Council and specify the purpose, task, reporting requirements, membership, and duration of council.

(b) Establishment. The Fire Sprinkler Advisory Council is hereby established pursuant to the Insurance Code Article 5.43-3 §6 (re-adopted without substantive change as Insurance Code §6003.101 and §6003.102, effective April 1, 2009; this updated reference applies to all subsequent references to Article 5.43 §6 in this section) and the Government Code Chapter 2110.

(c) Purpose and Tasks of the Advisory Council. In addition to other duties delegated by the commissioner, the purpose and tasks of the Fire Sprinkler Advisory Council are to:

(1) advise the state fire marshal regarding practices in the fire protection sprinkler system industry and the rules necessary to implement and administer Article 5.43-3 of the Insurance Code; and

(2) make recommendations to the state fire marshal regarding forms and procedures for registration certificates and licenses; and

(3) periodically review the sprinkler rules and recommend rule changes to the commissioner.

(d) Membership.

(1) Composition. Pursuant to the Insurance Code Article 5.43-3 §6 the advisory council shall be composed of seven members, as follows:

(A) three members who have been actively engaged in the management of a fire protection sprinkler system business for not less than five years preceding appointment;

(B) one member who represents the engineering section of the department's property and casualty program;

(C) one member who is a volunteer firefighter; and

(D) two members who each represent a different municipal fire department in this state.

(E) Additionally, the State Firemen's and Fire Marshals' Association of Texas may, on request by the commissioner, recommend a volunteer fire fighter for appointment to the advisory council.

(2) Terms. The advisory council members shall serve at the will of the commissioner. The commissioner shall replace any member who resigns from the advisory council or whose membership is otherwise terminated.

(e) Reporting Requirements for Rules. After completing review of the proposed rules and developing recommended changes to the rules, or completion of any other required or delegated duties, pursuant to the Insurance Code Article 5.43-3 §6, the advisory council shall submit a report of its findings and recommendations to the commissioner.

(f) Duration. The advisory council is established to operate for eight years from the effective date of the adoption of this section unless abolished earlier by the commissioner of insurance or extended to a later date by the commissioner of insurance. Such abolishment or extension shall be by amendment of this section as required by the Government Code §2110.008.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706070
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §§133.305, 133.307, 133.308

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to §§133.305, 133.307, and 133.308, concerning medical dispute resolution (MDR). These amendments are necessary to: implement statutory provisions of House Bill (HB) 724, HB 1003, and HB 2004 enacted by the 80th Legislature, Regular Session, and effective September 1, 2007; and clarify provisions of fee payment to independent review organizations (IROs) to ensure compliance with the Labor Code.

The proposed amendments incorporate administrative-level hearings into the Division's MDR process as a step between MDR or IRO review and judicial review in resolution of medical fee and medical necessity disputes. The proposed amendments also address licensing and professional specialty requirements for doctors performing reviews for IROs.

Changes to the Labor Code by HB 724 introduce the State Office of Administrative Hearings (SOAH) and the Division's contested case hearing process into the MDR process as a level of appeal that occurs after MDR or IRO review and prior to judicial review. Changes to the Labor Code by HB 1003 require IROs that use doctors to perform reviews of health care services provided under the Texas Workers' Compensation Act to only use doctors licensed to practice in Texas to perform the reviews. Changes to the Labor Code by HB 2004 require a doctor performing an independent review of a health care service provided to an injured employee, including a retrospective review, who reviews a specific workers' compensation case to hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving.

Prior to September 1, 2005, the Division's MDR process allowed a party to appeal a decision to SOAH prior to judicial review. In order to shorten the appeal process, HB 7, enacted by the 79th Legislature, Regular Session, amended Labor Code §413.031 to remove appeals to SOAH from the MDR process. In compliance with the revision to the code, the Division revised its rules to reflect the change. On November 1, 2006, a Travis County District Court determined in HCA Healthcare Corp. v. Texas Dept. Insurance and Division of Workers' Compensation, Cause No. D-1-GN-06-000176, that the MDR process as revised by HB 7 did not provide due process to parties and found subsection (k) of Labor Code §413.031 to be facially unconstitutional. The District Court judgment remains pending upon appeal to the Third Court of Appeals in Austin under Docket No. 03-07-0007-CV. During the 80th Legislative Session, the Texas Legislature enacted HB 724, which amends Labor Code §413.031(k) and adds Labor Code §413.031(k-1) - (k-2) and §413.0311.

Labor Code §413.031(k), (k-1), and (k-2) is applicable to a party to a medical dispute that is not subject to Labor Code §413.0311 or party to a dispute regarding spinal surgery subject to Labor Code §413.031(l). Under Labor Code §413.031(k), (k-1) and

(k-2), a party is entitled to a hearing before the SOAH for any dispute that remains unresolved after MDR or IRO review. A party aggrieved by a final decision of the SOAH may seek judicial review conducted in the manner provided for judicial review of a contested case under Chapter 2001, Subchapter G of the Texas Government Code.

Labor Code §413.0311 is applicable to a party to a medical fee dispute in which the amount sought in reimbursement does not exceed $2,000, a party appealing an IRO decision regarding determination of the retrospective medical necessity for a health care service for which the amount billed does not exceed $3,000, and a party appealing an IRO decision regarding determination of the concurrent or prospective medical necessity for a health care service. Under Labor Code §413.0311, a party is entitled to a contested case hearing for any dispute that remains unresolved after medical fee or medical necessity review. Hearings under Labor Code §413.0311 are to be conducted by a hearings officer in the manner provided for contested case hearings under Chapter 410, Subchapter D of the Labor Code; however, a benefit review conference is not a prerequisite for a contested case hearing under Labor Code §413.0311.

HB 1003 amends Labor Code §413.031 by adding subsection (e-2), which provides that an IRO that uses doctors to perform reviews of health care services provided under this title may only use doctors licensed to practice in this state.

HB 2004 adds Labor Code §408.0043, which provides that a doctor performing an independent review of a health care service provided to an injured employee, including a retrospective review, who reviews a specific workers' compensation case to hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving.

Proposed amendments to §133.305(a) add definitions for "requestor," "respondent" and "retrospective medical necessity dispute." Additional proposed amendments renumber the paragraphs in the subsection accordingly. Additionally, a proposed amendment to subsection (a)(7) expands the definition of "non-network health care" as used in Texas Administrative Code, Title 28, Part 2, Chapter 133, Subchapter D to include health care delivered pursuant to Labor Code §413.011(d-1) and §413.0115. This amendment clarifies that health care provided through a voluntary or informal network is non-network health care.

Proposed §133.307(a) specifies that the section is applicable to a request for medical fee dispute resolution for non-network or certain out-of-network health care: pending on September 1, 2007; remanded to the Division on or after September 1, 2007; or filed on or after September 1, 2007.

Proposed amendments to §133.307(c)(2)(A) and (B) and to subsection (d)(2)(A) and (3)(A) clarify that medical bills and explanation of benefits must be in a paper format rather than the format used for electronic submission of these documents. A proposed amendment to subsection (c)(3)(C) replaced the word "proof" with the word "documentation" and clarifies that documentation of employment payment may include provider billing statements or like documents, in addition to copies of receipts.

An amendment to §133.307(d) adds language to specify that the response to a request for MDR must be submitted to the Division and to the requestor.

Proposed amendments to §133.307(e)(1) specify that when additional information is requested by the Division, the party providing the additional information must also send a copy of the information to all other parties at the time it is submitted to the Division.

Proposed new §133.307(f) introduces another level of administrative hearings into the MDR process that allow a hearing either before the SOAH or through the Division's contested case hearing process. Language changes are proposed to reflect the new appeal process, to update statutory citations, and to be consistent with language in §133.308.

Under proposed §133.307(f)(1), parties to fee disputes in which the amount of reimbursement sought by the requestor in its request is greater than $2,000 may request a hearing before the SOAH. Proposed §133.307(f)(1)(A) says that to request a contested case hearing before SOAH, a party shall file a written request for a SOAH hearing with the Division's Chief Clerk of Proceedings in accordance with 28 TAC §148.3. Proposed §133.307(f)(1)(B) requires the party seeking review of the MDR decision to deliver a copy of its written request for a hearing to all other parties involved in the dispute at the same time the request for hearing is filed with the Division.

Under proposed §133.307(f)(2), parties to fee disputes in which the amount of reimbursement sought by the requestor in its request is less than or equal to $2,000 dollars may appeal the MDR decision by requesting a contested case hearing held by the Division. Proposed §133.307(f)(2)(A) says that to request a Division contested case hearing, a written request for a Division contested case hearing must be filed with the Division's Chief Clerk no later than the 20th day after the date on which the decision is received by the appealing party; that the request must be filed in compliance with Division rules; and that the party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute at the same time the request for a hearing is filed with the Division. Proposed §133.307(f)(2)(B) notes that requests that are timely submitted to a Division location other than the Division's Chief Clerk, such as a local field office of the Division, will be considered timely filed and forwarded to the Chief Clerk for processing; however this may result in a delay in the processing of the request; and that any decision that is not timely appealed becomes final. To avoid overlap with 28 TAC Chapter 148, the current §133.307(h) is proposed to be moved to §133.307(f)(2)(C), and is made applicable only to Division contested case hearings. Proposed §133.307(f)(2)(D) says that at a Division contested case hearing under this paragraph, the parties shall be limited to documentary evidence exchanged and to witnesses reasonably disclosed in said documentary evidence during the medical fee dispute under this subchapter except upon a showing of good cause, and that parties may not raise issues regarding liability, compensability, or medical necessity at a contested case hearing for a medical fee dispute. Proposed §133.307(f)(2)(E) says that except as otherwise provided in the section, a Division contested case hearing shall be conducted in accordance with Chapters 140 and 142 of Title 28. Proposed §133.307(f)(2)(F) reflect the new appeal process. Proposed §133.307(f)(2)(G) clarify that the costs of preparing a certified record of hearing shall be the responsibility of the party seeking judicial review, and that upon request, the Division shall consider the financial ability of the party to pay the costs, or any other factor that is relevant to a just and reasonable assessment of costs. The specific list of items included in the record for appeal pursuant to the current rule is proposed to be removed. This list was useful in ensuring that records of med-

ical dispute resolution decisions appealed directly to court were consistently prepared. Such a list is not necessary for records of contested case hearings.

Proposed amendments make §133.308 applicable to independent review of disputes: pending on September 1, 2007; remanded to the Division on or after September 1, 2007; or filed on or after September 1, 2007.

A proposed amendment to §133.308 creates a new subsection (c), which establishes that an IRO that uses doctors to perform reviews of health care services provided under §133.308 may only use doctors licensed to practice in Texas.

A proposed amendment to §133.308 creates a new subsection (d), which specifies that an IRO doctor performing a review under §133.308 shall be a doctor who is qualified by education, training and experience to provide all health care reasonably required by the nature of the injury to treat the condition until further material recovery from or lasting improvement to the injury can no longer reasonably be anticipated. Proposed amendments reletter the subsections which follow accordingly.

Proposed amendments to relettered §133.308(i) clarify that a requestor shall file a request for independent review with the insurance carrier that actually issued the adverse determination or the carrier's utilization review agent that actually issued the adverse determination no later than the 45th calendar day after receipt of the denial of reconsideration, and clarify that a carrier shall notify the Texas Department of Insurance (Department) of a request for independent review on the same day the request is received by the carrier or its URA.

Proposed amendments to §133.308 in relettered subsections (k) and (p)(1)(F) remove references to Insurance Code Articles 21.58C and 21.58A, which have been recodified as Texas Insurance Code Chapters 4202 and 4201.

A proposed amendment to relettered §133.308(h)(2) corrects a punctuation error.

A proposed amendment to relettered §133.308(j)(2) changes the phrase "individual or entity requesting medical necessity dispute resolution" to "requestor," and a proposed amendment to paragraph (5) in relettered subsection (j) reflects the fact that subsection (g) is relettered as subsection (i).

In regard to non-network retrospective medical necessity dispute resolution when reimbursement was denied for health care paid by the employee, a proposed amendment in relettered §133.308(r) clarifies that IRO fees are to be remitted to the assigned IRO by the carrier. A proposed amendment in relettered subsection (r)(9) states that §133.308 shall not be deemed to require an employee to pay for any part of a review, and that if application of a provision of the section would require an employee to pay for part of the cost of a review, that the cost shall instead be paid by the carrier.

A proposed amendment to relettered §133.308(t) specifies that in a contested case hearing, a decision issued by an IRO carries presumptive weight that may only be overcome by a preponderance of evidence-based medical evidence to the contrary. Proposed amendments to relettered §133.308(t)(1)(A) and (B), introduce another level of administrative hearings into the MDR process that allow a hearing either before the SOAH or through the Division's contested case hearing process. Under the proposed amendments, parties to retrospective medical necessity disputes in which the amount billed is greater than $3,000 may request a hearing before the SOAH by filing a written request for a SOAH hearing in accordance with 28 TAC §148.3 (relating to Requesting a Hearing); and parties to retrospective medical necessity disputes in which the amount billed is less than or equal to $3,000 dollars or who are appealing an IRO decision regarding determination of the concurrent or prospective medical necessity for a health service may appeal the IRO decision by requesting a Division contested case hearing.

Proposed §133.308(t)(1)(A) specifies that a party to a retrospective medical necessity dispute in which the amount billed is greater than $3,000 may request a hearing before the SOAH by filing a written request for a SOAH hearing with the Division's Chief Clerk of Proceedings in accordance with §148.3 of this title (relating to Requesting a Hearing), and that the party appealing the IRO decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute.

Proposed §133.308(t)(1)(B) specifies that a party to a retrospective medical necessity dispute in which the amount billed is less than or equal to $3,000 or an appeal of an IRO decision regarding determination of the concurrent or prospective medical necessity for a health care service may appeal the IRO decision by requesting a Division contested case hearing conducted by a Division hearing officer, and that a benefit review conference is not a prerequisite to a Division contested case hearing under the subparagraph. Proposed subsection (t)(1)(B)(i) states that a party is required to file an appeal with the Division's Chief Clerk no later than 20 days from the date the IRO decision is sent to the appealing party, and that the appeal must be filed in compliance with Division rules. Proposed subsection (t)(1)(B)(ii) requires the appealing party to deliver a copy of its written request for a hearing to all other parties in the dispute, and says that the IRO is not required to participate in the Division contested case hearing or any appeal. Proposed subsection (t)(1)(B)(iii) says that except as otherwise provided in the section, the hearing will be conducted in accordance with Chapters 140 and 142 of Title 28 of the Texas Administrative Code. Proposed subsection (t)(1)(B)(iv) provides that prior to a Division contested case hearing, a party may submit a request for a letter of clarification by the IRO to the Division's Chief Clerk; that a copy of the request for a letter of clarification must be provided to all parties involved in the dispute at the time it is submitted to the Division, but the request may not ask the IRO to reconsider its decision or issue a new decision. Proposed subsection (t)(1)(B)(iv)(I) specifies that a party's request for a letter of clarification must be submitted to the Division no later than 10 days before the date set for hearing, and that the request must include a cover letter that contains the names of the parties and all identification numbers assigned to the hearing or the independent review by the Division, the Department, or the IRO. Proposed subsection (t)(1)(B)(iv)(II) specifies that the Department will forward a party's request for a letter of clarification by the IRO to the IRO that conducted the independent review. Proposed subsection (t)(1)(B)(iv) and (v)(III) specifies that the IRO shall send a response to the request for a letter of clarification to the Department and to all parties that received a copy of the IRO's decision within 5 days of receipt of the party's request for a letter of clarification, and that the IRO's response is limited to clarifying statements in its original decision; the IRO shall not reconsider its decision and shall not issue a new decision in response to a request for a letter of clarification. Proposed subsection (t)(1)(B)(iv)(IV) specifies that a request for a letter of clarification does not alter the deadlines for appeal. Proposed subsection (t)(1)(B)(v)(I) - (VII) lists what evidence is admissible in a Division contested case hearing: the request for preauthorization, concurrent, or retrospective review; the request denial;

the request for reconsideration and the reconsideration denial; the request for independent review filed with the carrier or the carrier's URA; the documents submitted to the IRO by the carrier or the carrier's URA; all additional information obtained and considered by the IRO; any letter of clarification prepared by the IRO that conducted the independent review; and testimony from witnesses whose identity is reasonably disclosed in the documentation submitted for review pursuant to the clause. Proposed subsection (t)(1)(B)(v)(VIII) says that other evidence may be admitted for good cause, and that good cause evidence includes evidence considered by the IRO that had not been exchanged by one party to the other; proposed subsection (t)(1)(B)(vi) provides that a decision becomes final and appealable when issued by a Division hearing officer, and that a party who has exhausted all of its administrative remedies, and who is still aggrieved by a final decision may seek judicial review of the decision in the manner provided for judicial review of contested cases under Chapter 2001, Subchapter G of the Government Code. Proposed subsection (t)(1)(B)(vii) provides that upon receipt of a court petition seeking judicial review of a contested case hearing, the Division shall prepare and submit to the District Court a certified record of the contested case hearing. Proposed subsection (t)(1)(B)(vii)(I)(-a-) - (-e-) lists what must be included in notice to the Division concerning an appeal for judicial review. Proposed subsection (t)(1)(B)(viii)(II)(-a-) - (-f-) lists what is included in a certified record. Proposed subsection (t)(1)(B)(vii)(III) provides that the Division shall assess the party seeking judicial review the expense incurred by the Division in preparing and copying the record, including transcription costs, in accordance with the Government Code, §2001.177; and that upon request, the Division shall consider the financial ability of the party to pay the costs, or any other factor that is relevant to a just and reasonable assessment of costs.

A proposed amendment to §133.308(u) states that a written appeal must be filed no later than 20 days after the date the IRO decision is sent to the appealing party, and that the appeal must be filed in compliance with Division rules.

A proposed amendment to §133.308(v) changes the words "health care provider" to "requestor."

Robert E. Lang, Deputy Commissioner of Hearings, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the amended rules. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Lang, has also determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of the administration and enforcement of the proposed amendments will be: i) access to appeal procedures that provide due process for parties appealing medical disputes under Chapter 133, Subchapter D; ii) greater regulatory efficiency in administering disputes brought under Chapter 133, Subchapter D; iii) update of obsolete statutory citations; and iv) conformance of existing rules to newly enacted statutes.

The Division has determined that this proposal contains two sets of provisions relating to appeals of contested cases that must be analyzed in order to determine costs to parties who elect to seek judicial review of an MDR administrative appeal decision issued by a Division hearing officer under §133.307 or §133.308 and are therefore required to comply with the proposal. The same cost components are involved in complying with the two sections, and the following analysis is applicable to both sections.

Proposed amendments to §133.307(f)(2)(G) and §133.308(t)(1)(B)(vi). It is anticipated that costs may be incurred by disputing parties that elect to seek judicial review of an MDR administrative appeal decision issued by a Division hearing officer under §133.307 and §133.308. No party, however, is required by statute or by rule to seek judicial review, and therefore any costs incurred are incurred solely at the option of the party that elects to seek the review. Because the proposal in amended §133.307(f)(2)(G) and §133.308(t)(1)(B)(vi) includes new provisions for preparation of a record by the Division pursuant to Government Code §2001.177, a party seeking such review will incur expenses related to preparation of the record. The probable economic cost to a party to obtain the record in the event of an appeal as specified in §133.307(f)(2)(G) and §133.308(t)(1)(B)(vi) will vary depending on the size of the record, including the number of pages to be copied and the length of the recording to be transcribed. The Division estimates the cost of copying to be $.10 per page and the cost of transcription of a recorded record to be $1.25 per minute. This would result in a total cost of $20 to copy a 200 page record (which is an average number of pages in a record), and a cost of $75 for a transcript of a 60-minute hearing (which is an average length of hearing time). In addition, the transcript must be copied and certified because, pursuant to DWC procedures, the Division maintains original transcripts provided to it in its records. Thus, the total cost for a party electing to seek judicial review of a hearing pursuant to Chapter 2001, Subchapter G of the Government Code, is estimated to be $20 for the record, $75 for the transcription fee, an additional $6 for the copied transcript (approximately 60 pages for a 60-minute hearing), and a fee of $1 for certification, or an approximate total of $102 for the record of an average hearing that has 200 pages of documents and 60 minutes of taped hearing time. Parties wanting additional copies of the record would need to make requests under the open records requests process, and any associated costs would be determined in accordance with 28 TAC §108.1.

The proposed amendments to §§133.305, 133.307, and 133.308 do not make any substantive changes to procedures or other requirements that result in increased costs to a disputing party filing a request for medical dispute resolution. Any additional economic costs are required under the existing provisions in §133.307 and §133.308, or result from the implementation of HB 724, which amends Labor Code §413.031 and adds Labor Code §413.0311. Amended Labor Code §413.031 and new Labor Code §413.0311 require a party to seek administrative review of a medical dispute resolution decision through a SOAH or Division contested case hearing prior to judicial review, and the costs associated with such a review are not a result of the adoption, enforcement, or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT

As required by the Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on approximately 27,163 small or micro-businesses who elect to seek judicial review of an MDR administrative appeal decision issued by a Division hearing officer under §133.307 or §133.308 and are therefore are required to comply with the proposed rules. This number includes approximately 27,000 health care providers, and approximately 163 small business carriers. The number of small business health care providers

comes from Texas Workforce Commission data for the second quarter of 2007. The number of small business carriers comes from current Division records. The proposed rule will only be applicable to health care providers that provide services to injured workers pursuant to the Texas workers' compensation system, thus will have no adverse economic effect on small business health care providers that do not provide services to injured workers pursuant to the Texas workers' compensation system.

Adverse economic impact may result from cost arising from proposed amendments to §133.307(f)(2)(G) and §133.308(t)(1)(B)(vi), which are discussed in the Public Benefit/Cost Note portion of this proposal. Specifically, cost to small or micro-businesses will arise from the expense associated with obtaining a record if a small or micro-business is party to a Division contested case hearing arising under §133.307 or §133.308 and elects to seek review of the decision of the Division hearing officer pursuant to Chapter 2001, Subchapter G of the Government Code. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. The total cost of compliance to large businesses and small or micro-businesses is not dependent upon the size of the business, but rather is dependent upon the size of the record for a particular administrative proceeding, and the number of appeals that a business elects to pursue.

Section 2006.002(c) requires an agency that determines that there may be an adverse impact on small or micro businesses as a result of a rule proposal to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The Division has considered possible regulatory methods to accomplish the objectives of the proposed amendments that will also minimize the adverse impact on small businesses. These regulatory methods considered by the Division include: i) not adopting the proposed regulation; ii) implementing different requirements or standards for small and micro-businesses; and iii) including provisions that allow the Division to take financial impact into consideration when charging for an agency record. These regulatory methods are discussed in the following analysis.

REGULATORY FLEXIBILITY ANALYSIS

The primary objective of the amended sections is to ensure that parties involved in the medical dispute resolution process are afforded due process in the resolution of fee and medical necessity disputes that arise in the workers' compensation system. Provisions are included that require parties that elect to appeal a contested case decision to pay the cost associated with preparation of a record for judicial review.

In accordance with the Government Code §2006.002(c-1), the Division has considered the following regulatory methods to accomplish the objectives of the proposed sections while minimizing adverse impacts on small businesses:

Not adopting the proposed regulation. If the provisions requiring a party appealing a Division contested case hearing decision to pay the costs associated with preparation of the record were not included in the proposal, the proposed rule would not have an adverse economic effect on small or micro-businesses. However, Government Code §2001.177 requires that an agency adopt rules in order for it to charge an appealing party for the cost of preparation of the agency record for appeal. Therefore, without the provisions requiring a party appealing a Division contested case hearing decision to pay the costs associated with preparation of the record for the appeal, the Division would not be able to charge any party for preparation of a record, and the state would have to bear the cost burden of preparing all records for judicial appeal of Division contested case hearings arising under these proposed sections.

Implementing different requirements or standards for small and micro-businesses. If the provisions requiring a party appealing a Division contested case hearing decision to pay the costs associated with preparation of the record were drafted to not be applicable to small or micro-businesses, the proposed amendments would not have an adverse economic effect on small or micro-businesses. However, while the proposed amendments might have an adverse economic effect on small or micro-businesses, they will not always create an adverse economic impact. As noted in the cost note analysis, the estimated cost that a party could incur as result of implementation of this proposal is $102 (for an agency record that has 200 pages of documents and 60 minutes of taped hearing time) per judicial appeal pursued by that party. For some small or micro-businesses, payment of this expense would not result in adverse economic harm. It would be unfair to exempt from compliance some businesses that face no economic harm, while requiring all other parties that do not meet the definitions of small or micro businesses under §2006.001 of the Government Code to pay the cost of preparation of an agency record if they choose to appeal a decision in a Division contested case hearing.

Including provisions that allow the Division to take financial impact into consideration when charging for an agency record. Provisions already exist in Chapter 148 of Title 28 of the Administrative Code that allow the Division, upon request, to take into consideration a party's financial ability to pay the cost of preparation of a record when the party appeals a SOAH decision made pursuant to Labor Code §413.031. If similar provisions are included in this proposal concerning preparation of an agency record for appeal of a Division contested case hearing decision made pursuant to Labor Code §413.031, a small or micro-businesses that chooses to appeal a decision of a hearing officer in a Division contested case hearing pursuant to the proposed amendments could request the Division to take its financial ability to pay the cost of preparation of a record into consideration. In this way, the Division could take steps to avoid actual adverse economic effect on the small or micro-business. Additionally, inclusion of such provisions would allow the Division to avoid actual adverse economic effect on other parties as well.

As a result of the foregoing analysis, the Division has included the following provision in the proposal at §133.307(f)(2)(G) and §133.308(t)(1)(B)(vii)(III): "Upon request, the Division shall consider the financial ability of the party to pay the costs, or any other factor that is relevant to a just and reasonable assessment of costs."

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on January 14, 2008. Comments may be submitted via the Internet through the Division's Internet website at *http://www.tdi.state.tx.us/wc/rules/propose-*

drules/toc.html or by mailing or delivering your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing should be submitted separately to the Office of the General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under Labor Code §§408.0271, 413.002, 413.0111, 413.020, 413.031, 413.0311, 413.032, 410.157, 408.0043, 401.024, 402.00111, 402.083 and 402.061; Insurance Code §4201.054 and Government Code §2001.177. Labor Code §408.0271 states that if health care services provided to an employee are determined by the carrier to be inappropriate, the carrier shall notify the provider in writing of the carrier's decision and demand a refund of the portion of payment on the claim received by the provider for the inappropriate services and the provider may appeal such a carrier's determination no later than the 45th day after the date of the carrier's request for the refund. Labor Code §413.002(d) provides that if the Commissioner determines that an IRO is in violation of Labor Code Chapter 413, rules adopted by the Commissioner under Chapter 413, applicable provisions of Labor Code Title 5, the Commissioner or a delegated representative shall notify the IRO of the alleged violation and may compel the production of any documents or other information as necessary to determine whether the violation occurred. Labor Code §413.0111 provides that the rules adopted by the Commissioner for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on behalf of the pharmacies under terms and conditions agreed upon by the pharmacies. Labor Code §413.020 provides the authority to adopt rules which enable the Division to charge a carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges. The section also provides that the Division may charge a provider who exceeds a fee or utilization guideline or a carrier who unreasonably disputes charges that are consistent with a fee or utilization guideline a reasonable fee for review of health care treatment, fees, or charges. Labor Code §413.031 specifies the processes for the decision and appeal for medical fee and medical necessity disputes not subject to Labor Code §413.0311, states that the Commissioner by rule shall specify the appropriate dispute resolution process for fee disputes in which a claimant has paid for medical services and seeks reimbursement, and provides that an IRO that uses doctors to perform reviews of health care services provided under this title may only use doctors licensed to practice in this state. Labor Code §413.0311 specifies the processes for the decision and appeal for medical fee and medical necessity disputes which involve a party to a medical fee dispute in which the amount sought in reimbursement does not exceed $2,000, a party appealing an IRO decision regarding determination of the retrospective medical necessity for a health care service for which the amount billed does not exceed $3,000, and a party appealing an IRO decision regarding determination of the concurrent or prospective medical necessity for a health care service. Labor Code §413.032(a) provides that an IRO that conducts a review under Chapter 413 shall specify the minimum elements on which the IRO decision is based. Labor Code §410.157 grants the Commissioner authority to adopt rules governing procedures under which contested case hearings are conducted. Labor Code §408.0043 provides that a doctor performing an independent review of a health care service provided to an injured employee, including a retrospective review, who reviews a specific workers' compensation case to hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving. Labor Code §401.024 authorizes the Commissioner to require by rule the use of facsimile or other electronic means to transmit information. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Labor Code §402.083 provides that information in or derived from a claim file regarding an employee is confidential. Labor Code §402.061 provides that the Commissioner of Workers' Compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Insurance Code §4201.054 grants the Commissioner of Workers' Compensation the authority to adopt rules as necessary to implement Chapter 4201, as that Article applies to utilization review of health care services provided to persons eligible for workers' compensation medical benefits under Labor Code Title 5. Government Code §2001.177(a) provides that a state agency by rule may require a party who appeals a final decision in a contested case to pay all or a part of the cost of preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

The following statutes are affected by this proposal: Insurance Code Chapters 4201 and 4202; Labor Code §§401.024, 402.00111, 402.083, 408.0043, 408.0271, 408.031, 413.002, 413.0111, 413.020, 413.031, 413.0311, 413.032, 413.0511, and 413.0512; and Government Code §2001.177(a).

§133.305. MDR--General.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Adverse determination--A determination by a utilization review agent that the health care services furnished or proposed to be furnished to a patient are not medically necessary, as defined in Insurance Code [~~Article 21.58A~~ (]§4201.002 [~~effective April 1, 2007~~)].

(2) Life-threatening--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted, as defined in Insurance Code [~~Article 21.58A, §2(12)~~ (]§4201.002 [~~effective April 1, 2007~~)].

(3) (No change.)

(4) Medical fee dispute--A dispute that involves an amount of payment for non-network health care rendered to an injured employee (employee) that has been determined to be medically necessary and appropriate for treatment of that employee's compensable injury. The dispute is resolved by the Division of Workers' Compensation (Division) pursuant to Division rules, including §133.307 of this subchapter (relating to MDR of Fee Disputes). The following types of disputes can be a medical fee dispute:

(A) a health care provider (provider), or a qualified pharmacy processing agent[~~,~~] as described in Labor Code §413.0111, dispute of an insurance carrier (carrier) reduction or denial of a medical bill;

(B) - (C) (No change.)

(5) (No change.)

(6) Non-network health care--Health care not delivered or arranged by a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 and related rules. "Non-network health care" includes health care delivered pursuant to Labor Code §413.011(d-1) and §413.0115.

(7) (No change.)

(8) Requestor--The party that timely files a request for medical dispute resolution with the Division; the party seeking relief in medical dispute resolution. [~~Retrospective medical necessity dispute--A dispute that involves a review of the medical necessity of health care already provided. The dispute is reviewed by an IRO pursuant to the Insurance Code, Labor Code and related rules, including §133.308 of this subchapter.~~]

(9) Respondent--The party against whom relief is sought.

(10) Retrospective medical necessity dispute--A dispute that involves a review of the medical necessity of health care already provided. The dispute is reviewed by an IRO pursuant to the Insurance Code, Labor Code and related rules, including §133.308 of this subchapter.

(b) - (e) (No change.)

§133.307. MDR of Fee Disputes.

(a) Applicability. The applicability of this section is as follows.

(1) This section applies to a request for medical fee dispute resolution for non-network or certain authorized out-of-network health care not subject to a contract, that is:

(A) pending on September 1, 2007;

(B) remanded to the Division on or after September 1, 2007; or

(C) filed on or after September 1, 2007.

(2) In resolving non-network disputes regarding the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the Division of Workers' Compensation (Division) is to adjudicate the payment, given the relevant statutory provisions and Division rules.

[~~(a) Applicability. This section applies to a request for medical fee dispute resolution for non-network or certain authorized out-of-network health care not subject to a contract, which was filed on or after January 15, 2007. Dispute resolution requests filed prior to January 15, 2007 shall be resolved in accordance with the rules in effect at the time the request was filed. In resolving non-network disputes which are over the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the Division of Workers' Compensation (Division) is to adjudicate the payment, given the relevant statutory provisions and Division rules.~~]

(b) (No change.)

(c) Requests. Requests for medical dispute resolution (MDR) shall be filed in the form and manner prescribed by the Division. Requestors shall file two legible copies of the request with the Division.

(1) Timeliness. A requestor shall timely file with the Division's MDR Section or waive the right to MDR. The Division shall deem a request to be filed on the date the MDR Section receives the request.

(A) (No change.)

(B) A request may be filed later than one year after the date(s) [~~dates(s)~~] of service if:

(i) - (iii) (No change.)

(2) Provider Request. The provider shall complete the required sections of the request in the form and manner prescribed by the Division. The provider shall file the request with the MDR Section by any mail service or personal delivery. The request shall include:

(A) a copy of all medical bill(s), in a paper billing format, as originally submitted to the carrier and a copy of all medical bill(s) submitted to the carrier for reconsideration in accordance with §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills);

(B) a copy of each explanation of benefits (EOB), in a paper explanation of benefits format, relevant to the fee dispute or, if no EOB was received, convincing documentation providing evidence of carrier receipt of the request for an EOB;

(C) - (H) (No change.)

(3) Employee Dispute Request. An employee who has paid for health care may request medical fee dispute resolution of a refund or reimbursement request that has been denied. The employee's dispute request shall be sent to the MDR Section by mail service, personal delivery or facsimile and shall include:

(A) - (B) (No change.)

(C) documentation [~~proof~~] of employee payment (copies of receipts, provider billing statements, or like documents);

(D) (No change.)

(4) (No change.)

(d) Responses. Responses [~~Carrier or provider responses~~] to a request for MDR shall be legible and submitted to the Division and to the requestor in the form and manner prescribed by the Division.

(1) (No change.)

(2) Carrier Response. Upon receipt of the request, the carrier shall complete the required sections of the request form and provide any missing information not provided by the requestor and known to the carrier.

(A) The response to the request shall include the completed request form and:

(i) all initial and reconsideration EOBs, in a paper explanation of benefits format, related to the health care in dispute not submitted by the requestor or a statement certifying that the carrier did not receive the provider's disputed billing prior to the dispute request;

(ii) a copy of all medical bill(s), in a paper billing format, relevant to the dispute, if different from that originally submitted to the carrier for reimbursement;

(iii) - (iv) (No change.)

(B) - (E) (No change.)

(3) Provider Response. Upon receipt of the request, the provider shall complete the required sections of the request form and provide any missing information not provided by the requestor and known to the provider. The response shall include:

(A) any documentation, including medical bills, in a paper billing format, and employee payment receipts, supporting the reasons why the refund request was denied;

(B) - (C) (No change.)

(e) MDR Action. The Division will review the completed request and response to determine appropriate MDR action.

(1) Request for Additional Information. The Division may request additional information from either party to review the medical fee issues in dispute. The additional information must be received by the Division no later than 14 days after receipt of this request. If the Division does not receive the requested additional information within 14 days after receipt of the request, then the Division may base its decision on the information available. The party providing the additional information [~~Division~~] shall forward a copy of the [~~any~~] additional information [~~received~~] to all other [~~the~~] parties at the time it is submitted to the Division.

(2) - (5) (No change.)

(f) Appeal to Contested Case Hearing. A party to a medical fee dispute may seek review of the MDR decision or dismissal as provided in this subsection. Parties are deemed to have received the MDR decision as provided in §102.5 of this title.

(1) A party to a medical fee dispute in which the amount of reimbursement sought by the requestor in its request for MDR is greater than $2000.00, may request a contested case hearing before the State Office of Administrative Hearings (SOAH).

(A) To request a contested case hearing before SOAH, a party shall file a written request for a SOAH hearing with the Division's Chief Clerk of Proceedings in accordance with §148.3 of this title (relating to Requesting a Hearing).

(B) The party seeking review of the MDR decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute at the same time the request for hearing is filed with the Division.

(2) A party to a medical fee dispute in which the amount of reimbursement sought by the requestor in its request for MDR is equal to or less than $2000.00 may request a Division contested case hearing conducted by a Division hearing officer. A benefit review conference is not a prerequisite to a Division contested case hearing under this paragraph.

(A) To request a Division contested case hearing, a written request for a Division contested case hearing must be filed with the Division's Chief Clerk no later than the 20th day after the date on which the decision is received by the appealing party. The request must be filed in compliance with Division rules. The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute at the same time the request for a hearing is filed with the Division.

(B) Requests that are timely submitted to a Division location other than the Division's Chief Clerk, such as a local field office of the Division, will be considered timely filed and forwarded to the Chief Clerk for processing; however this may result in a delay in the processing of the request. Any decision that is not timely appealed becomes final.

(C) Prior to a Division contested case hearing, either party may request a clerical correction of an error in a decision. Clerical errors are non-substantive and include, but are not limited to, typographical or mathematical calculation errors. Only the Division can determine if a clerical correction is required. A request for clerical correction does not alter the deadlines for appeal.

(D) At a Division contested case hearing under this paragraph, the parties shall be limited to documentary evidence exchanged and to witnesses reasonably disclosed in said documentary evidence during the medical fee dispute under this subchapter except upon a showing of good cause. Parties may not raise issues regarding liability, compensability, or medical necessity at a contested case hearing for a medical fee dispute.

(E) Except as otherwise provided in this section, a Division contested case hearing shall be conducted in accordance with Chapters 140 and 142 of this title (relating to Dispute Resolution/General Provisions and Benefit Contested Case Hearing).

(F) A party to a medical fee dispute who has exhausted all administrative remedies may seek judicial review of the Division's decision. Judicial review under this paragraph shall be conducted in the manner provided for judicial review of contested cases under Chapter 2001, Subchapter G of the Government Code. The parties will be deemed to have received the decision as provided in §102.5 of this title. A decision becomes final and appealable when issued by a Division hearing officer. If a party to a medical fee dispute files a petition for judicial review of the Division's decision, the party shall, at the time the petition is filed with the district court, send a copy of the petition for judicial review to the Division's Chief Clerk. The Division and the Department are not considered to be parties to the medical dispute pursuant to Labor Code §413.031(k-2) and §413.0311(e). The following information must be included in the petition or provided by cover letter:

(i) the DWC number(s) for the dispute being appealed;

(ii) the names of the parties;

(iii) the cause number;

(iv) the identity of the court; and

(v) the date the petition was filed with the court.

(G) The Division shall, upon receipt of the court petition, prepare a record of the Division contested case hearing and submit a copy of the record to the district court. The Division shall assess the party seeking judicial review expenses incurred by the Division in preparing the certified copy of the record, including transcription costs, in accordance with Government Code §2001.177 (relating to Costs of Preparing Agency Record). Upon request, the Division shall consider the financial ability of the party to pay the costs, or any other factor that is relevant to a just and reasonable assessment of costs.

[~~(f) Appeal. A party to a medical fee dispute may seek judicial review of the decision by filing a petition in a Travis County district court not later than the 30th day after the date on which the decision is received by the appealing party. The parties will be deemed to have received the decision on the acknowledgement date as defined in §102.5 of this title. Any decision that is not timely appealed becomes final. If a party to a medical fee dispute files a petition for judicial review of the MDR Section decision, the party shall, at the time the petition is filed with the district court, send a copy of the petition for judicial review to the Division. The Division and the Department are not considered to be parties to the medical dispute pursuant to Labor Code §413.031(k). The following information must be included in the petition or provided by cover letter:~~]

[~~(1) the MDR Section tracking number for the dispute being appealed;~~]

[~~(2) the names of the parties;~~]

[~~(3) the cause number;~~]

[~~(4) the identity of the court; and~~]

[~~(5) the date the petition was filed with the court.~~]

[(g) Record for Appeal. The Division shall upon receipt of the court petition prepare a record of the MDR Section review and submit a copy of the record to the district court. The Division shall assess the party seeking judicial review expenses incurred by the Division in preparing and copying the record. The record shall contain:]

[(1) the MDR Section decision;]

[(2) the request for MDR;]

[(3) all documentation and written information submitted by the requestor;]

[(4) all documentation and written information submitted by the respondent;]

[(5) other documents contained in the MDR Section files (e.g. correspondence, orders for production);]

[(6) copies of any pertinent medical literature or other documentation utilized to support the decision or, where such documentation is subject to copyright protection or is voluminous, then a listing of such documentation referencing the portion(s) of each document utilized;]

[(7) if not specified in the decision, citations to the particular provisions in statutes, rules, and other authorities that are utilized to support the decision; and]

[(8) signed and certified custodian of records affidavit;]

[(h) Letter of Clerical Correction. Upon receipt of a Division decision, either party may request a clerical correction of an error in a decision. Clerical errors are non-substantive and include but are not limited to typographical or mathematical calculation errors. Only the Division can determine if a clerical correction is required. A request for clerical correction does not alter the deadlines for appeal.]

§133.308. MDR by Independent Review Organizations.

(a) Applicability. The applicability of this section is as follows.

(1) This section applies to the independent review of network and non-network preauthorization, concurrent, or retrospective medical necessity disputes for a dispute resolution request that is:

(A) pending on September 1, 2007;

(B) remanded to the Division on or after September 1, 2007; or

(C) filed on or after September 1, 2007.

(2) When applicable, retrospective medical necessity disputes shall be governed by the provisions of Labor Code §413.031(n) and related rules.

(3) All independent review organizations (IROs) performing reviews of health care under the Labor Code and Insurance Code, regardless of where the independent review activities are located, shall comply with this section. The Insurance Code, the Labor Code and related rules govern the independent review process.

[(a) Applicability. This section applies to the independent review of network and non-network preauthorization, concurrent or retrospective medical necessity disputes for a dispute resolution request filed on or after January 15, 2007. Dispute resolution requests filed prior to January 15, 2007 shall be resolved in accordance with the rules in effect at the time the request was filed. When applicable, retrospective medical necessity disputes shall be governed by the provisions of Labor Code §413.031(n) and related rules. All independent review organizations (IROs) performing reviews of health care under the Labor Code and Insurance Code, regardless of where the independent review activities are located, shall comply with this section. The Insurance Code, the Labor Code and related rules govern the independent review process.]

(b) IRO Certification. Each IRO performing independent review of health care provided in the workers' compensation system shall be certified pursuant to Insurance Code [Article 21.58C (]Chapter 4202 [effective April 1, 2007)].

(c) Professional licensing requirements. Notwithstanding Insurance Code Chapter 4202, an IRO that uses doctors to perform reviews of health care services provided under this section may only use doctors licensed to practice in Texas.

(d) Professional specialty requirements. Notwithstanding Insurance Code Chapter 4202, an IRO doctor performing a review under this section shall be a doctor who is qualified by education, training and experience to provide all health care reasonably required by the nature of the injury to treat the condition until further material recovery from or lasting improvement to the injury can no longer reasonably be anticipated.

(e) [(c)] Conflicts. Conflicts of interest will be reviewed by the Department consistent with the provisions of the Insurance Code [Article 21.58C, §2(f) (]§4202.008 [effective April 1, 2007)], Labor Code §413.032(b), §12.203 of this title (relating to Conflicts of Interest Prohibited), and any other related rules. Notification of each IRO decision must include a certification by the IRO that the reviewing provider has certified that no known conflicts of interest exist between that provider, the employee, any of the treating providers, or any of the providers who reviewed the case for determination prior to referral to the IRO.

(f) [(d)] Monitoring. The Division will monitor IROs under Labor Code §§413.002, 413.0511, and 413.0512. The Division shall report the results of the monitoring of IROs to the Department on at least a quarterly basis.

(g) [(e)] Requestors. The following parties may be [are considered] requestors in medical necessity disputes:

(1) In network disputes:

(A) providers, or qualified pharmacy processing agents acting on behalf of a pharmacy, as described in Labor Code §413.0111, for preauthorization, concurrent, and retrospective medical necessity dispute resolution; and

(B) employees for preauthorization, concurrent, and retrospective medical necessity dispute resolution.

(2) In non-network disputes:

(A) providers, or qualified pharmacy processing agents acting on behalf of a pharmacy, as described in Labor Code §413.0111, for preauthorization, concurrent, and retrospective medical necessity dispute resolution; and

(B) employees for preauthorization and concurrent medical necessity dispute resolution; and, for retrospective medical necessity dispute resolution when reimbursement was denied for health care paid by the employee.

(h) [(f)] Requests. A request for independent review must be filed in the form and manner prescribed by the Department. The Department's IRO request form may be obtained from:

(1) the Department's Internet website at www.tdi.state.tx.us; or

(2) the Health and Workers' [Worker's] Compensation Network Certification and Quality Assurance Division, Mail Code

103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(i) [~~(g)~~] Timeliness. A requestor shall file a request for independent review with the insurance carrier (carrier) that actually issued the adverse determination or the carrier's utilization review agent (URA) that actually issued the adverse determination no later than the 45th calendar day after receipt of the denial of reconsideration. The carrier shall [~~immediately~~] notify the Department of a [~~upon receipt of the~~] request for an independent review on the same day the request is received by the carrier or its URA. In a preauthorization or concurrent review dispute request, an employee with a life-threatening condition, as defined in §133.305 of this subchapter (relating to MDR--General), is entitled to an immediate review by an IRO and is not required to comply with the procedures for a reconsideration.

(j) [~~(h)~~] Dismissal. The Department may dismiss a request for medical necessity dispute resolution if:

(1) the requestor informs the Department, or the Department otherwise determines, that the dispute no longer exists;

(2) the requestor [~~individual or entity requesting medical necessity dispute resolution~~] is not a proper party to the dispute pursuant to subsection (g) of this section;

(3) the Department determines that the dispute involving a non-life-threatening condition has not been submitted to the carrier for reconsideration;

(4) the Department has previously resolved the dispute for the date(s) of health care in question;

(5) the request for dispute resolution is untimely pursuant to subsection (i) [~~(g)~~] of this section;

(6) the request for medical necessity dispute resolution was not submitted in compliance with the provisions of this subchapter; or

(7) the Department determines that good cause otherwise exists to dismiss the request.

(k) [~~(i)~~] IRO Assignment and Notification. The Department shall review the request for IRO review, assign an IRO, and notify the parties about the IRO assignment consistent with the provisions of Insurance Code [~~Article 21.58C, §2(a)(1)(A) (~~]§4202.002(a)(1) [~~effective April 1, 2007)~~], §1305.355(a), Chapter 12, Subchapter F of this title (related to Random Assignment of Independent Review Organizations), any other related rules, and this subchapter.

(l) [~~(j)~~] Carrier Document Submission. The carrier or the carrier's URA shall submit the documentation required in paragraphs (1) - (6) of this subsection to the IRO not later than the third working day after the date the carrier receives the notice of IRO assignment. The documentation shall include:

(1) the forms prescribed by the Department for requesting IRO review;

(2) all medical records of the employee in the possession of the carrier that are relevant to the review;

(3) all documents, guidelines, policies, protocols and criteria used by the carrier in making the decision;

(4) all documentation and written information submitted to the carrier in support of the appeal;

(5) the written notification of the initial adverse determination and the written adverse determination of the reconsideration; and

(6) any other information required by the Department related to a request from a carrier for the assignment of an IRO.

(m) [~~(k)~~] Additional Information. The IRO shall request additional necessary information from either party or from other providers whose records are relevant to the review.

(1) The party or providers with relevant records shall deliver the requested information to the IRO as directed by the IRO. If the provider requested to submit records is not a party to the dispute, the carrier shall reimburse copy expenses for the requested records pursuant to §134.120 of this title (relating to Reimbursement for Medical Documentation). Parties to the dispute may not be reimbursed for copies of records sent to the IRO.

(2) If the required documentation has not been received as requested by the IRO, the IRO shall notify the Department and the Department shall request the necessary documentation.

(3) Failure to provide the requested documentation as directed by the IRO or Department may result in enforcement action as authorized by statutes and rules.

(n) [~~(l)~~] Designated Doctor Exam. In performing a review of medical necessity, an IRO may request that the Division require an examination by a designated doctor and direct the employee to attend the examination pursuant to Labor Code §413.031(g) and §408.0041. The IRO request to the Division must be made no later than 10 days after the IRO receives notification of assignment of the IRO. The treating doctor and carrier shall forward a copy of all medical records, diagnostic reports, films, and other medical documents to the designated doctor appointed by the Division, to arrive no later than three working days prior to the scheduled examination. Communication with the designated doctor is prohibited regarding issues not related to the medical necessity dispute. The designated doctor shall complete a report and file it with the IRO, on the form and in the manner prescribed by the Division no later than seven working days after completing the examination. The designated doctor report shall address all issues as directed by the Division.

(o) [~~(m)~~] Time Frame for IRO Decision. The IRO will render a decision as follows:

(1) for life-threatening conditions, no later than eight days after the IRO receipt of the dispute;

(2) for preauthorization and concurrent medical necessity disputes, no later than the 20th day after the IRO receipt of the dispute;

(3) for retrospective medical necessity disputes, no later than the 30th day after the IRO receipt of the IRO fee; and

(4) if a designated doctor examination has been requested by the IRO, the above time frames begin on the date of the IRO receipt of the designated doctor report.

(p) [~~(n)~~] IRO Decision. The decision shall be mailed or otherwise transmitted to the parties and to representatives of record for the parties and transmitted in the form and manner prescribed by the Department within the time frames specified in this section.

(1) The IRO decision must include:

(A) a list of all medical records and other documents reviewed by the IRO, including the dates of those documents;

(B) a description and the source of the screening criteria or clinical basis used in making the decision;

(C) an analysis of, and explanation for, the decision, including the findings and conclusions used to support the decision;

(D) a description of the qualifications of each physician or other health care provider who reviewed the decision;

(E) a statement that clearly states whether or not medical necessity exists for each of the health care services in dispute;

(F) a certification by the IRO that the reviewing provider has no known conflicts of interest pursuant to the Insurance Code [~~Article 21.58A (~~]Chapter 4201 [~~effective April 1, 2007)~~], Labor Code §413.032, and §12.203 of this title; and

(G) if the IRO's decision is contrary to:

(i) the Division's policies or guidelines adopted under Labor Code §413.011, the IRO must indicate in the decision the specific basis for its divergence in the review of medical necessity of non-network health care; or

(ii) the network's treatment guidelines, the IRO must indicate in the decision the specific basis for its divergence in the review of medical necessity of network health care.

(2) The notification to the Department shall also include certification of the date and means by which the decision was sent to the parties.

(q) [~~(o)~~] Carrier Use of Peer Review Report after an IRO Decision. If an IRO decision determines that medical necessity exists for health care that the carrier denied and the carrier utilized a peer review report on which to base its denial, the peer review report shall not be used for subsequent medical necessity denials of the same health care services subsequently reviewed for that compensable injury.

(r) [~~(p)~~] IRO Fees. IRO fees will be paid in the same amounts as the IRO fees set by Department rules. In addition to the specialty classifications established as tier two fees in Department rules, independent review by a doctor of chiropractic shall be paid the tier two fee. IRO fees shall be paid as follows:

(1) In network disputes, a preauthorization, concurrent, or retrospective medical necessity dispute for health care provided by a network, the carrier must remit payment to the assigned IRO within 15 days after receipt of an invoice from the IRO;

(2) In non-network disputes, IRO fees for disputes regarding non-network health care must be paid as follows:

(A) in a preauthorization or concurrent review medical necessity dispute or retrospective medical necessity dispute resolution when reimbursement was denied for health care paid by the employee [~~an employee reimbursement dispute~~], the carrier shall remit payment to the assigned IRO within 15 days after receipt of an invoice from the IRO.

(B) in a retrospective medical necessity dispute, the requestor must remit payment to the assigned IRO within 15 days after receipt of an invoice from the IRO.

(i) if the IRO fee has not been received within 15 days of the requestor's receipt of the invoice, the IRO shall notify the Department and the Department shall dismiss the dispute with prejudice.

(ii) after an IRO decision is rendered, the IRO fee must be paid or refunded by the nonprevailing party as determined by the IRO in its decision.

(3) Designated doctor examinations requested by an IRO shall be paid by the carrier in accordance with the medical fee guidelines under the Labor Code and related rules.

(4) Failure to pay or refund the IRO fee may result in enforcement action as authorized by statute and rules and removal from the Division's Approved Doctor List.

(5) For health care not provided by a network, the non-prevailing party to a retrospective medical necessity dispute must pay or refund the IRO fee to the prevailing party upon receipt of the IRO decision, but not later than 15 days regardless of whether an appeal of the IRO decision has been or will be filed.

(6) The IRO fees may include an amended notification of decision if the Department determines the notification to be incomplete. The amended notification of decision shall be filed with the Department no later than five working days from the IRO's receipt of such notice from the Department. The amended notification of decision does not alter the deadlines for appeal.

(7) If a requestor withdraws the request for an IRO decision after the IRO has been assigned by the Department but before the IRO sends the case to an IRO reviewer, the requestor shall pay the IRO a withdrawal fee of $150 within 30 days of the withdrawal. If a requestor withdraws the request for an IRO decision after the case is sent to a reviewer, the requestor shall pay the IRO the full IRO review fee within 30 days of the withdrawal.

(8) In addition to Department enforcement action, the Division may assess an administrative fee in accordance with Labor Code §413.020 and §133.305 of this subchapter.

(9) This section shall not be deemed to require an employee to pay for any part of a review. If application of a provision of this section would require an employee to pay for part of the cost of a review, that cost shall instead be paid by the carrier.

(s) [~~(q)~~] Defense. A carrier may claim a defense to a medical necessity dispute if the carrier timely complies with the IRO decision with respect to the medical necessity or appropriateness of health care for an employee. Upon receipt of an IRO decision for a retrospective medical necessity dispute that finds that medical necessity exists, the carrier must review, audit, and process the bill. In addition, the carrier shall tender payment consistent with the IRO decision, and issue a new explanation of benefits (EOB) to reflect the payment within 21 days upon receipt of the IRO decision.

(t) [~~(r)~~] Appeal. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), a decision issued by an IRO carries presumptive weight that may only be overcome by a preponderance of evidence-based medical evidence to the contrary. Appeals of IRO decisions will be as follows:

(1) Non-Network Appeal Procedures. A party to a medical necessity dispute may seek review of a dismissal or decision as follows: [~~A carrier shall comply with the IRO decision in accordance with Labor Code §413.031(m). A party to a medical necessity dispute may seek judicial review of the IRO decision by filing a petition in a Travis County district court not later than the 30th day after the date on which the decision is received by the appealing party. The parties will be deemed to have received the decision on the acknowledgement date as defined in §102.5 of this title (relating to General Rules for Written Communications to and from the Commission). Any decision that is not timely appealed becomes final. A party to a medical necessity dispute who appeals the decision shall, at the time the petition is filed, send a copy of the petition for judicial review to the IRO that issued the decision being appealed, and request that the IRO provide a record for the appeal. The party requesting the record shall pay the IRO copying costs for the records.~~]

(A) A party to a retrospective medical necessity dispute in which the amount billed is greater than $3,000 may request a hearing before the State Office of Administrative Hearings (SOAH) by filing a written request for a SOAH hearing with the Division's Chief Clerk of

Proceedings in accordance with §148.3 of this title (relating to Requesting a Hearing). The party appealing the IRO decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute.

(B) A party to a retrospective medical necessity dispute in which the amount billed is less than or equal to $3,000 or an appeal of an IRO decision regarding determination of the concurrent or prospective medical necessity for a health care service may appeal the IRO decision by requesting a Division CCH conducted by a Division hearing officer. A benefit review conference is not a prerequisite to a Division CCH under this subparagraph.

(i) The written appeal must be filed with the Division's Chief Clerk no later than 20 days after the date the IRO decision is sent to the appealing party and must be filed in compliance with Division rules. The Division shall deem a request to be filed on the date the Division's Chief Clerk receives the request.

(ii) The party appealing the IRO decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute. The IRO is not required to participate in the Division CCH or any appeal.

(iii) Except as otherwise provided in this section, a Division CCH shall be conducted in accordance with Chapters 140 and 142 of this title (relating to Dispute Resolution/General Provisions and Benefit Contested Case Hearing).

(iv) Prior to a Division CCH, a party may submit a request for a letter of clarification by the IRO to the Division's Chief Clerk. A copy of the request for a letter of clarification must be provided to all parties involved in the dispute at the time it is submitted to the Division. A request for a letter of clarification may not ask the IRO to reconsider its decision or issue a new decision.

(I) A party's request for a letter of clarification must be submitted to the Division no later than 10 days before the date set for hearing. The request must include a cover letter that contains the names of the parties and all identification numbers assigned to the hearing or the independent review by the Division, the Department, or the IRO.

(II) The Department will forward the party's request for a letter of clarification by the IRO to the IRO that conducted the independent review.

(III) The IRO shall send a response to the request for a letter of clarification to the Department and to all parties that received a copy of the IRO's decision within 5 days of receipt of the party's request for a letter of clarification. The IRO's response is limited to clarifying statements in its original decision; the IRO shall not reconsider its decision and shall not issue a new decision in response to a request for a letter of clarification.

(IV) A request for a letter of clarification does not alter the deadlines for appeal.

(v) At a Division CCH, evidence shall be limited to:

(I) the request for preauthorization, concurrent, or retrospective review;

(II) the request denial;

(III) the request for reconsideration and the reconsideration denial;

(IV) the request for independent review filed with the carrier or the carrier's URA;

(V) the documents submitted to the IRO by the carrier or the carrier's URA;

(VI) all additional information obtained and considered by the IRO;

(VII) any letter of clarification prepared by the IRO that conducted the independent review; and

(VIII) testimony from witnesses whose identity is reasonably disclosed in the documentation submitted for review pursuant to this clause.

(IX) For good cause other evidence may be admitted. Good cause includes evidence pertaining to information provided to and reasonably considered by the IRO that has not previously been exchanged by one party to the other.

(vi) A decision becomes final and appealable when issued by a Division hearing officer. A party who has exhausted all of its applicable administrative remedies under this subparagraph and who is aggrieved by a final decision of the hearing officer may seek judicial review of the decision. Judicial review under this subparagraph shall be conducted in the manner provided for judicial review of contested cases under Chapter 2001, Subchapter G of the Government Code.

(vii) Upon receipt of a court petition seeking judicial review of a Division CCH held under this subparagraph, the Division shall prepare and submit to the district court a certified copy of the entire record of the Division CCH under review.

(I) The following information must be included in the petition or provided to the Division by cover letter:

(-a-) Any applicable Division docket number for the dispute being appealed;

(-b-) the names of the parties;

(-c-) the cause number;

(-d-) the identity of the court; and

(-e-) the date the petition was filed with the court.

(II) The record of the hearing includes:

(-a-) all pleadings, motions, and intermediate rulings;

(-b-) evidence received or considered;

(-c-) a statement of matters officially noticed;

(-d-) questions and offers of proof, objections, and rulings on them;

(-e-) any decision, opinion, report, or proposal for decision by the officer presiding at the hearing and any decision by the Division; and

(-f-) a transcription of the audio record of the Division CCH.

(III) The Division shall assess to the party seeking judicial review expenses incurred by the Division in preparing the certified copy of the record, including transcription costs, in accordance with the Government Code §2001.177 (relating to Costs of Preparing Agency Record). Upon request, the Division shall consider the financial ability of the party to pay the costs, or any other factor that is relevant to a just and reasonable assessment of costs.

(C) [~~(2)~~] [~~Record for Non-Network Appeal.~~] If a party to a medical necessity dispute properly requests review of an IRO decision by SOAH or through a Division CCH, [~~files a petition for judicial review of the IRO decision,~~] the IRO, upon request, shall provide a record of the review and submit it to the requestor within 15 days of the request. The party requesting the record shall pay the IRO copying costs for the records. The record shall include the following documents

that are in the possession of the IRO and which were reviewed by the IRO in making the decision including:

(i) [~~(A)~~] medical records;

(ii) [~~(B)~~] all documents used by the carrier in making the decision that resulted in the adverse determination under review by the IRO;

(iii) [~~(C)~~] all documentation and written information submitted by the carrier to the IRO in support of the review;

(iv) [~~(D)~~] the written notification of the adverse determination and the written determination of the reconsideration;

(v) [~~(E)~~] a list containing the name, address, and phone number of each provider who provided medical records to the IRO relevant to the review;

(vi) [~~(F)~~] a list of all medical records or other documents reviewed by the IRO, including the dates of those documents;

(vii) [~~(G)~~] a copy of the decision that was sent to all parties;

(viii) [~~(H)~~] copies of any pertinent medical literature or other documentation (such as any treatment guideline or screening criteria) utilized to support the decision or, where such documentation is subject to copyright protection or is voluminous, then a listing of such documentation referencing the portion(s) of each document utilized;

(ix) [~~(I)~~] a signed and certified custodian of records affidavit; and

(x) [~~(J)~~] other information that was required by the Department related to a request from a carrier or the carrier's URA for the assignment of the IRO.

(2) [~~(3)~~] Network Appeal Procedures. A party to a medical necessity dispute may seek judicial review of a dismissal or the decision as provided in Insurance Code §1305.355 and Chapter 10 of this title (relating to Workers' Compensation Healthcare Networks).

(u) [~~(s)~~] Non-Network Spinal Surgery Appeal. A party to a preauthorization or concurrent medical necessity dispute regarding spinal surgery may appeal the IRO decision in accordance with Labor Code §413.031(l) by requesting a Contested Case Hearing (CCH).

(1) The written appeal must be filed with the Division Chief Clerk no later than 20 [~~10~~] days after the date the IRO decision is sent to the appealing party[~~receipt of the IRO decision~~] and must be filed in compliance with Division rules [~~§142.5(c) of this title (relating to Sequence of Proceedings to Resolve Benefit Disputes)~~].

(2) The CCH must be scheduled and held not later than 20 days after Division receipt of the request for a CCH.

(3) The hearing and further appeals shall be conducted in accordance with Chapters 140, 142, and 143 of this title (relating to Dispute Resolution/General Provisions, Benefit Contested Case Hearing, and Review by the Appeals Panel).

(4) The party appealing the IRO decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute. The IRO is not required to participate in the CCH or any appeal.

(v) [~~(t)~~] Medical Fee Dispute Request. If the requestor [~~health care provider~~] has an unresolved fee dispute related to health care that was found medically necessary, after the final decision of the medical necessity dispute, the requestor [~~provider~~] may file a medical fee dispute in accordance with §133.305 and §133.307 of this subchapter (relating to MDR of Fee Disputes).

(w) [~~(u)~~] Enforcement. If the Department believes that any person is in violation of the Labor Code, Insurance Code, or [~~and~~] related rules, the Department may initiate an enforcement action. Nothing in this section modifies or limits the authority of the Department or the Division.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200706005
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4715

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Department proposes the repeal of §65.607 and amendments to §§65.601 - 65.605, 65.608, and 65.610 - 65.612, concerning the Deer Breeder Proclamation. The proposed repeal and amendments are necessary to implement the requirements of House Bill (H.B.) 1308, enacted by the 80th Texas Legislature, which amended Parks and Wildlife Code, Chapter 43, Subchapter E; to make changes recommended by the Breeder User Group, an ad hoc group of deer breeders; and to make housekeeping and clean-up type changes to improve clarity and sense.

The title of 31 TAC Chapter 65, Subchapter T, is affected by H.B. 1308, which eliminates the term "scientific breeder" and replaces it with the term "deer breeder."

The proposed repeal of §65.607, concerning Marking of Deer, would have the effect of eliminating provisions regarding the marking of deer held in captivity under a deer breeder's permit. House Bill 1308 added new Parks and Wildlife Code, §43.3561, which creates a statutory provision for identification of breeder deer. The proposed repeal is necessary to prevent conflict between the rules and their enabling statute.

House Bill 1308 made a number of changes involving terminology. Already mentioned is the change of "scientific breeder" to "deer breeder." The proposed amendments would replace the terms "scientific breeder" and "scientific breeder deer" with the terms "breeder" and "breeder deer" throughout the subchapter. The change is necessary to make regulatory language consistent with statutory language.

The proposed amendment to §65.601, concerning Definitions, would introduce a new definition, eliminate or alter several current definitions, and redesignate the paragraphs in the section accordingly.

The proposed amendment to §65.601 would add a definition for "accredited test facility." The current rules require disease testing to be done by the Texas Veterinary Medical Diagnostic Laboratories; however, in the time since the rules were adopted the United States Department of Agriculture has certified additional laboratories to perform testing for Chronic Wasting Disease. Therefore, the proposed amendment would define an "accredited test facility" as "any laboratory approved by the U.S. Department of Agriculture to test white-tailed deer or mule deer for Chronic Wasting Disease" and replace references in §65.604, concerning Disease Monitoring, as necessary.

The proposed amendment to §65.601 would eliminate the definitions for "common carrier," "deer," "propagation," and "scientific." "Deer" is now defined by statute (Parks and Wildlife Code, §43.351) and "common carrier," "propagation," and "scientific" are no longer used in the subchapter and thus are unnecessary.

The proposed amendment to §65.601(9) would alter the definition of "sale" to include releases or deliveries for a consideration, barter, or even exchange. The current definition applies only to transfer of possession and does not address the scenario in which a person who is not a deer breeder might purchase a breeder deer and liberate it, in which case the deer would not be possessed by the purchaser. The proposed amendment is necessary to ensure that the rules apply to the various possible situations and circumstances in which breeder deer are bought and sold.

The proposed amendment to §65.601(12) would alter the definition of "transfer permit" to reference the definition of "transfer" in Parks and Wildlife Code, §43.351(7). Parks and Wildlife Code, §43.351(7), defines "transfer" as "any movement of breeder deer from a breeder facility, a nursing facility, or a deer management permit facility other than to an accredited veterinarian for medical purposes." The current definition implies that a transfer permit is required for all movement of breeder deer; however, an exception in §65.610(e)(6) allows breeder deer to be moved without a transfer permit for medical treatment by a veterinarian. The proposed amendment is necessary to make the definition of "transfer permit" accurate.

The proposed amendment to §65.610(13) would alter the definition of "unique number" to match the description of "unique number" in Parks and Wildlife Code, §43.3561, as added by H.B. 1308.

The proposed amendment to §65.602, concerning Permit Requirement and Permit Privileges, would replace current terminology with statutory terminology, replace a reference to the Texas Administrative Code (TAC) with a reference to the Parks and Wildlife Code, and eliminate a time-dependent provision that is no longer necessary. As previously noted, H.B. 1308 made a number of changes that necessitate alterations of regulatory terminology for the sake of consistency. The proposed amendment makes those changes where necessary throughout the section. House Bill 1308 also removed the commission's rulemaking authority with respect to the marking of breeder deer. The proposed amendment therefore removes a reference to 31 TAC §65.607, concerning Marking of Deer, because that section is proposed for repeal in this rulemaking. The reference would be replaced with a reference to Parks and Wildlife Code, §43.3561, which prescribes marking requirements by statute. Current §65.602(c) specifies that the provisions of that subsection are effective until March 31, 2007. This deadline was created as part of a previous rulemaking related to disease surveillance and is no longer necessary because the deadline has passed.

The proposed amendment to §65.603, concerning Application and Permit Issuance, would make the alterations to terminology discussed previously, eliminate the breeding plan required as part of an application for a breeder permit, eliminate the requirement that an application for a permit be notarized, clarify a provision relating to the certification of the adequacy of prospective breeding facilities, allow the department to delay the denial of a permit renewal if the permittee is making acceptable progress towards resolving deficiencies, and reword a provision governing the submission of site plans following facility modification.

Current §65.603 requires an applicant for a breeder permit to submit a breeding plan to the department for approval. The department has determined that the original purpose for the requirement no longer exists. When the former scientific breeder's permit was created, it was thought necessary to monitor breeding operations to determine if further specific regulations would be required. The department has determined that deer breeding expertise has progressed beyond the experimental stage and there is no reason to continue to require the breeding plan.

The current rule also requires an applicant for a breeder permit to have the completed application notarized. Notarization is not necessary as a means to certify that the information is accurate and true to the applicant's knowledge, because the application is a government record and falsification is therefore an offense under Penal Code, §37.10. Therefore, the current requirement is unnecessary.

Current §65.603(a)(2)(C)(II) requires as statement from a certified wildlife biologist to the effect that a prospective breeding facility is "adequate to conduct the proposed activities." Because Parks and Wildlife Code, Chapter 43, Subchapter L, and the current rules specify the exact activities that may be conducted under a deer breeder permit, there is no need to require a statement of proposed activities. Therefore, the provision would be reworded to require a statement from a certified wildlife biologist that the prospective deer breeding facility is adequate for the lawful conduct of activities governed by the subchapter.

Current §65.603(d) provides for the renewal of a breeder permit, provided the permittee has submitted an application for renewal and is otherwise in compliance with the requirements of the subchapter; however, the current rule does not explicitly state a requirement for timely renewal. Therefore, the proposed amendment would specify that an application for a renewal must be timely filed. All deer breeder permits expire each July 1. The department notifies each permittee of pending expiration and reminds the permittee to submit a renewal application if they seek to continue deer breeding. The department considers that a renewal application is timely filed if it is received prior to the expiration of the current permit. However, the department is sympathetic to comments from the regulated community with respect to unpredictable and unexpected events that can occur; therefore, the proposed amendment would allow the department to consider the particulars of an applicant's situation in the event the applicant is unable to timely file a renewal application, with the understanding that the applicant must be making satisfactory progress towards resolution of the situation.

Current §65.603(f) requires permittees to submit an accurate diagram to the department whenever a breeder facility is "enlarged or added to." The provision is intended to apply to changes that increase the size of the facility or include physical area that was not previously part of the facility. The regulated community has commented that the current language could be misunderstood to mean that changes to the placement of pens or gates within

a permitted facility would require the filing of a new diagram with the department. Therefore, the proposed amendment to §65.603(f) would provide that a new diagram must be submitted to the department whenever a permittee alters "the exterior dimensions of a breeder facility, either by enlargement or reconfiguration."

In addition to previously discussed changes to terminology, the proposed amendment to §65.604, concerning Disease Monitoring, would eliminate a time-sensitive provision that is no longer necessary and identify the effective date of a previous rulemaking. The proposed amendment also would allow for the testing of deer for the presence of Chronic Wasting Disease at any facility approved by the U.S. Department of Agriculture to perform such tests.

Current §65.604(a) stipulates that the provisions of subsections (b) - (d) and (g) take effect April 1, 2007. This effective date was created in order to defer the effectiveness of those provisions until other provisions governing disease-surveillance requirements could be brought into effect. The current provision is no longer necessary because those requirements are now in effect.

Current §65.604(e) and (f) refer to "the effective date of this subsection." The language was necessary because the department wished to defer the effectiveness of those subsections. Now that the effective date is known, the department proposes to identify it in the rules so that interested parties will not have to search through previous rulemakings.

The proposed amendment to §65.605, concerning Holding Facility Standards and Care of Deer, would remove a reference to §65.607, concerning Marking of Deer, because that section is proposed for repeal. The reference would be replaced with a reference to Parks and Wildlife Code, §43.3561, which prescribes marking requirements by statute. The proposed amendment would also make changes to terminology as discussed. The proposed amendment also would remove the requirement that notification of an escaped deer be notarized. Notarization is not necessary as a means to certify that the information is accurate and true to the applicant's knowledge, because the notification application is a government record and falsification is therefore an offense under Penal Code, §37.10. Therefore, the current requirement is unnecessary.

The proposed amendment to §65.608, concerning Annual Reports and Records, would eliminate the provision requiring permittees to maintain documentation attesting to the source or origin of deer held by the permittee. Under the provisions of House Bill 1308, Parks and Wildlife Code, §43.359 was amended to require a deer breeder to maintain an accurate and legible record of all breeder deer acquired, purchased, propagated, sold, transferred, or disposed of and any other information required by the department that reasonably relates to the regulation of deer breeders. Additionally, H.B. 1308 amended Parks and Wildlife Code, §43.359 to require deer breeders to make any information required under Parks and Wildlife Code, Chapter 43, Subchapter L, for the previous two reporting years available to a game warden or another authorized department employee. Therefore, the current regulatory provision is no longer necessary.

The proposed amendment to §65.610, concerning Transfer of Deer, would make changes to terminology, make references to statutory provisions, clarify the meaning of a provision affecting permit possession, and reword a provision for clarity.

The proposed amendment to §65.610(c) would allow the temporary possession of breeder deer by a person who is not a permitted deer breeder, provided the person possesses a valid transfer permit. The current rule allows the possession of breeder deer by unpermitted persons only for purposes of release. Discussions with the Breeder User Group have convinced the department that employees of deer breeders should be allowed to transport breeder deer under the authority of a transfer permit.

Under current §65.610(d)(2), the release of buck breeder deer is prohibited during an open season and during the 10-day period immediately prior to an open season unless the buck's antlers have been removed. House Bill 1308 provides an exception to this prohibition by allowing the transfer of antlered buck deer to another breeding facility or to a facility operated under a deer management permit. The proposed amendment would provide for the exceptions created under H.B. 1308.

Current §65.610(d)(3) allows a person who is not a breeder permit holder to be in possession of breeder deer under a transfer permit if the deer are being transported for purposes of release. This provision is no longer necessary because of the proposed amendment to 65.610(c), which authorizes temporary possession of breeder deer by a person who is not a permitted deer breeder.

Current §65.610(e)(4) is awkwardly worded. The proposed amendment would restate the provision in a clearer fashion.

The proposed amendment to §65.611, concerning Prohibited Acts, would eliminate three subsections that are no longer necessary and identify the effective date of a previous rulemaking.

Currently, §65.611(c) prohibits the possession of deer taken from the wild within a breeder facility. However, under H.B. 1308, Parks and Wildlife Code, §43.365 was amended to eliminate the offense of taking, trapping, or capturing or attempting to take, trap, or capture white-tailed deer or mule deer from the wild. The provision was eliminated because Parks and Wildlife Code, §43.061, makes it an offense for any person to capture, transport, or transplant any game animal or game bird from the wild unless that person has obtained a permit to trap, transport, and transplant from the department. Additionally, the violation of under §43.061 is a Class B misdemeanor rather than a Class C misdemeanor.

The proposed amendment to §65.611 would also eliminate current subsection (f), which prohibits the hunting or killing of breeder deer within a breeder facility. House Bill 1308 amended Parks and Wildlife Code, §43.365 to allow for the euthanization of breeder deer for humane dispatch or disease testing and prohibits the hunting or killing of breeder deer except as provided by commission rule.

The proposed amendment to §65.611 would also eliminate current subsection (h), which prohibits the sale of breeder deer unless either the purchaser or seller possesses a permit valid for the transaction. The proposed amendments affecting the transfer permit make the provisions of subsection (h) redundant and therefore unnecessary.

Currently, §65.611(f) states that the subsection does not apply to breeder deer possessed before the effective date of the subsection. When the rule was promulgated, the effective date of the rulemaking was not known. Now that the effective is known, the proposed amendment would identify that date for the sake of ease and convenience.

The proposed amendment to §65.612, concerning Disposition of Deer, would change terminology where necessary as previously discussed.

Clayton Wolf, Big Game Program Director, has determined that for each of the first five years the repeal and amendments as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

Mr. Wolf also has determined that for each of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing or administering the rules as proposed will be: creation of increased regulatory flexibility, which will allow deer breeders to stay in compliance with the regulations more readily; compliance by TPWD with legislative policy and direction as expressed in H.B. 1308; simplification of the rules, which should allow improved compliance by the regulated community; and removal of unnecessary provisions, which will increase the clarity of the rules.

The rules are expected to have a beneficial or neutral effect on small businesses and micro-businesses. In particular, the proposed rules would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees. Accordingly, no statement of the effect on small and micro-businesses is required under Government Code Chapter 2006.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Jeannie Muñoz, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4491 (e-mail: jeannie.munoz@tpwd.state.tx.us).

SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §§65.601 - 65.605, 65.608, 65.610 - 65.612

The amendments are proposed under Parks and Wildlife Code, §43.357, which authorizes the commission to make regulations governing the possession of breeder deer held under Parks and Wildlife Code, Chapter 43, Subchapter L; the recapture of lawfully possessed breeder deer that have escaped from the facility of a deer breeder; permit applications and fees; reporting requirements; procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer; the endorsement of a deer breeder facility by a certified wildlife biologist; the number of breeder deer that a deer breeder may possess; and the dates for which a deer breeder permit is valid.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.601. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) Accredited test facility--A laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for Chronic Wasting Disease.

(2) [~~(1)~~] Authorized agent--An individual designated by the permittee to conduct activities on behalf of the permittee. For the purposes of this subchapter, the terms 'deer breeder' [~~'scientific breeder'~~] and 'permittee' include authorized agents.

(3) [~~(2)~~] Certified Wildlife Biologist--A person not employed by the department who has been certified as a wildlife biologist by The Wildlife Society, or who:

(A) has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or a related educational field; and

(B) has not less than five years of post-graduate experience in research or wildlife management associated with white-tailed deer or mule deer within the past 10 years.

[~~(3) Common Carrier--Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service or any vehicle employed in such transportation service.~~]

[~~(4) Deer--White-tailed deer of the species Odocoileus virginianus or mule deer of the species Odocoileus hemionus.~~]

(4) [~~(5)~~] Facility--One or more enclosures, in the aggregate and including additions, that are the site of deer [~~scientific~~] breeding operations under a single deer [~~scientific~~] breeder's permit.

(5) [~~(6)~~] Movement qualified--A status, determined by the department, under which the removal of deer from a facility is authorized.

[~~(7) Propagation--The holding of captive deer for reproductive purposes.~~]

(6) [~~(8)~~] Release--The intentional release of a live deer from a permitted facility, or from a vehicle or trailer at a location other than a facility.

(7) [~~(9)~~] Sale--The transfer of possession or the delivery and release of deer for consideration and includes a barter and an even exchange.

[~~(10) Scientific--The accumulation of knowledge, by systematic methods, about the physiology, nutrition, genetics, reproduction, mortality and other biological factors affecting deer.~~]

(8) [~~(11)~~] Serial Number--A permanent four-digit number assigned to a deer [~~the scientific~~] breeder by the department. A serial number shall be preceded by the prefix "TX".

(9) [~~(12)~~] Transfer permit--A permit authorizing the movement of breeder deer from a breeder facility, a nursing facility, or a deer management permit facility other than to an accredited veterinarian for medical purposes [~~or shipping of deer as a result of purchase, sale, barter, exchange, or any other arrangement under which deer are physically removed from or accepted into a permitted facility~~].

(10) [~~(13)~~] Unique number--An alphanumeric number of not more than four characters assigned by the department to the breeding facility in which the breeder deer was born and unique to that breeder deer [~~A four-digit alphanumeric identifier assigned to a permittee for the purposes of individually identifying the specific deer held by the permittee~~].

§65.602. Permit Requirement and Permit Privileges.

(a) No person may possess a live deer in this state unless that person possesses a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R.

(b) Except as otherwise provided by this subchapter, a person who possesses a valid deer [~~scientific~~] breeder's permit may:

(1) engage in the business of breeding legally possessed breeder deer within the facility for which the permit was issued;

(2) purchase or otherwise lawfully take possession of breeder deer lawfully possessed by another deer [~~scientific~~] breeder;

(3) sell or transfer breeder deer that are in the legal possession of the permittee;

(4) release breeder deer from a permitted facility into the wild as provided in this subchapter;

(5) recapture lawfully possessed breeder deer that have been marked in accordance with Parks and Wildlife Code, §43.3561 [~~§65.607 of this title (relating to Marking of Deer)~~] that have escaped from a permitted facility;

(6) temporarily relocate and hold breeder deer in accordance with the applicable provisions of §65.610 of this title (relating to Transfer of Deer [~~Permit~~]); and

(7) temporarily relocate and recapture buck breeder deer under the provisions of Subchapter D of this chapter (relating to Deer Management Permit).

[~~(c) The provisions of this subsection are effective until March 31, 2007. No person may release a deer obtained or possessed under this subchapter to the wild unless the person can prove that the deer came directly from a facility enrolled in a current, valid herd health plan for cervidae approved by Texas Animal Health Commission.~~]

§65.603. Application and Permit Issuance.

(a) An applicant for an initial deer [~~scientific~~] breeder's permit shall submit the following to the department:

(1) a completed [~~notarized~~] application on a form supplied by the department;

[~~(2) a breeding plan which identifies:~~]

[~~(A) the activities proposed to be conducted; and~~]

[~~(B) the purpose(s) for proposed activities;~~]

(2) [~~(3)~~] a letter of endorsement by a certified wildlife biologist which states that[~~:~~]

[~~(A) the certified wildlife biologist has reviewed the breeding plan;~~]

[~~(B) the activities identified in the breeding plan are adequate to accomplish the purposes for which the permit is sought;~~]

[~~(C)~~] the biologist has conducted an inspection of the facility identified in the application and affirms that:

(A) [~~(i)~~] the facility identified in the application:

(i) [~~(I)~~] physically exists; and

(ii) [~~(II)~~] is adequate for the lawful [~~to~~] conduct of [~~the proposed~~] activities governed by this subchapter; and

(B) [~~(ii)~~] no deer are present within the facility;

(3) [~~(4)~~] a diagram of the physical layout of the facility;

(4) [~~(5)~~] the application processing fee specified in Chapter 53, Subchapter A, of this title (relating to Fees); and

(5) [~~(6)~~] any additional information that the department determines is necessary to process the application.

(b) A deer [~~scientific~~] breeder's permit may be issued when:

(1) the application and associated materials have been approved by the department; and

(2) the department has received the fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(c) A deer [~~scientific~~] breeder's permit shall be valid from the date of issuance until the immediately following July 1.

(d) Except as provided in subsection (g) of this section, a deer [~~scientific~~] breeder's permit may be renewed annually, provided that the applicant:

(1) is in compliance with the provisions of this subchapter;

(2) has submitted a timely [~~notarized~~] application for renewal or is, as determined by the department, making satisfactory progress towards resolution of deficiencies that prevent timely renewal;

(3) has filed the annual report in a timely fashion, as required by §65.608 of this title (relating to Annual Reports and Records); and

(4) has paid the permit renewal fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(e) An authorized agent may be added to or deleted from a permit at any time by faxing or mailing an agent amendment form to the department. No person added to a permit under this subsection shall participate in any activity governed by a permit until the department has received the agent amendment form.

(f) Except as provided by this subchapter for release, transfer, or transport of breeder deer, a deer breeder's permit authorizes the holding of breeder deer only within the physical layout of a facility described by the diagram required by subsection (a)(3) of this section. If a permittee wishes to alter the exterior dimensions of a facility, either by enlargement or reconfiguration, the permittee shall submit an accurate diagram of the altered facility, indicating all changes to the existing facility, to the department. It is unlawful to introduce, cause the introduction of, or hold breeder deer anywhere other than within the dimensions of the facility as indicated by the diagram on file with the department. [~~If a scientific breeder facility is enlarged or added to, the permittee shall submit an accurate diagram of the facility, including the additions or enlargements, to the department. No person shall introduce or cause the introduction of deer to a pen that has been added or enlarged unless the diagram required by this subsection is on file at the department's Austin headquarters.~~]

(g) The department may refuse permit issuance or renewal to any person who within five years of applying for a deer [~~scientific~~] breeder's permit has been finally convicted of or received deferred adjudication for:

(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony; or

(3) a violation of Parks and Wildlife Code, §63.002.

(h) The department may prohibit any person for a period of up to five years from acting as an agent of any permittee if the person

has been convicted of or received deferred adjudication for an offense listed in subsection (g) of this section.

(i) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

(j) An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Operations (or his or her designee);

(B) the Director of the Wildlife Division; and

(C) the Big Game Program Director.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

§65.604. Disease Monitoring.

~~[(a) The provisions of subsections (b) - (d) and (g) of this section take effect April 1, 2007.]~~

(a) [~~(b)~~] No person shall remove, or authorize or cause the removal of a live breeder deer from a facility permitted under this subchapter unless:

(1) the facility is designated by the department as movement qualified; or

(2) the removal is specifically authorized by the department.

(b) [~~(c)~~] No person shall knowingly or intentionally allow the introduction of a live breeder deer from a facility that is not movement qualified into a facility permitted under this subchapter.

(c) [~~(d)~~] The department may authorize the transfer of breeder deer from a facility that is not movement qualified and for which there is no valid deer [~~scientific~~] breeder permit to a facility permitted under this subchapter; however, the receiving facility shall not allow any breeder deer to be moved from the facility for a period of one year from the date the transfer occurs.

(d) [~~(e)~~] A facility permitted under this subchapter is movement qualified if no CWD test results of 'detected' have been returned from an accredited test facility [~~the Texas Veterinary Medical Diagnostic Laboratories~~] for breeder deer submitted from the facility and at least one of the following criteria is satisfied:

(1) the facility is certified by the Texas Animal Health Commission (TAHC) as having a CWD Monitored Herd Status of Level A or higher;

(2) less than five eligible breeder deer mortalities have occurred within the facility as of May 23, 2006 [~~the effective date of this subsection~~]; or

(3) CWD test results of 'not detected' have been returned from an accredited test facility [~~the Texas Veterinary Medical Diagnostic Laboratories~~] on a minimum of 20% of all eligible breeder deer mortalities occurring within the facility as of May 23, 2006 [~~the effective date of this subsection~~].

(e) [~~(f)~~] An eligible mortality is any lawfully possessed breeder deer aged 16 months or older that has died within a facility after May 23, 2006 [~~the effective date of this subsection~~].

(f) [~~(g)~~] A facility is no longer movement qualified if it cannot meet the requirements of subsection (d) [~~(e)~~] of this section as of March 31 of any year; however, a facility may reestablish movement qualified status at any time by meeting the requirements of subsection (d) [~~(e)~~] of this section.

(g) [~~(h)~~] If a person receives or accepts into a facility that is movement qualified a breeder deer from a facility that is known by the person not to be a movement qualified facility, the receiving facility immediately and automatically loses movement qualified status for a period of one year from the date the transfer occurred, as determined by the department.

(h) [~~(i)~~] Except as provided in this subsection, no person shall introduce into or remove deer from or allow or authorize breeder deer to be introduced into or removed from any facility for which a test result of 'detected' has been obtained from an accredited test facility [~~by the Texas Veterinary Medical Diagnostic Laboratories~~]. The provisions of this subsection take effect immediately upon the posting of notice by the department at the facility that a 'detected' result has been obtained and continue in effect until:

(1) the facility meets the requirements of subsection (d) [~~(e)~~] of this section; and

(2) the department specifically authorizes the resumption of permitted activities at the facility.

§65.605. Holding Facility Standards and Care of Deer.

(a) The entire perimeter fence of a facility shall be no less than seven feet in height, and shall be constructed of department-approved net mesh, chain link or welded wire that will retain breeder deer. An indoor facility is acceptable if it meets the standards described in this section and provides permanent access to an outdoor environment that is sufficient for keeping the breeder deer in captivity.

(b) A permittee shall notify the department immediately upon discovering the escape of breeder deer from a facility. Such notice shall be made on a form provided by the department [~~and shall be notarized~~]. The permittee shall have ten days from the date of such report to capture only those breeder deer that are marked in accordance with Parks and Wildlife Code, §43.3561 [~~§65.607 of this title (relating to Marking of Deer)~~]. All recaptured breeder deer must be returned to the facility from which the breeder deer escaped. If after ten days the permittee is unable to capture escaped breeder deer that have been reported in accordance with this subsection, the department may grant an additional five-day period for capture efforts to continue, contingent upon the permittee proving to the department's satisfaction that reasonable efforts were made to effect the capture during the first ten-day period.

§65.608. Annual Reports and Records.

(a) Each deer [~~scientific~~] breeder shall file a legible, completed annual report on a form supplied or approved by the department by not later than May 15 of each year.

[(b) The holder of a scientific breeder's permit shall maintain and, on request, provide to the department adequate documentation as to the source or origin of all deer held in captivity.]

(b) [(c)] A person other than a deer [scientific] breeder holding breeder deer for nursing, breeding, or health care purposes shall maintain and, upon request, provide copies of transfer permits indicating the source of all breeder deer in the possession of that person.

§65.610. Transfer of Deer.

(a) General requirement. No person may remove breeder deer from or accept breeder deer into a permitted facility unless a valid transfer permit on a form provided by the department has been activated as provided in this section.

(b) Transfer by deer [scientific] breeder. The holder of a valid deer [scientific] breeder's permit may transfer legally possessed breeder deer:

(1) to or from another deer [scientific] breeder as a result of sale, purchase or other arrangement;

(2) to or from another deer [scientific] breeder on a temporary basis for breeding purposes;

(3) to or from another person on a temporary basis for nursing purposes;

(4) to an individual who purchases or otherwise lawfully obtains the deer for purposes of release but does not possess a deer [scientific] breeder's permit;

(5) to an individual for the purpose of obtaining medical attention, provided the breeder deer do not leave this state; and

(6) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis.

(c) Transfer by person other than deer [scientific] breeder. An individual who does not possess a deer [scientific] breeder's permit may possess deer under a transfer permit if the individual is transporting breeder deer within the state and the breeder deer were legally purchased or obtained from a deer [scientific] breeder [for purposes of release].

(d) Release.

(1) The department may authorize the release of breeder deer for stocking purposes if the department determines that the release of breeder deer will not detrimentally affect existing populations or systems.

(2) Breeder deer [Deer] lawfully purchased, possessed, or obtained for stocking purposes may be held in captivity for no more than 30 days:

(A) to acclimate the breeder deer to habitat conditions at the release site;

(B) when specifically authorized by the department;

(C) if they are not hunted prior to release; and

(D) if the temporary holding facility is physically separate from any deer breeding [scientific breeder] facility and the breeder deer being temporarily held are not commingled with breeder deer being held in a deer breeding [scientific breeder] facility. Breeder deer [Deer] removed from a deer breeding [scientific breeder] facility to a temporary holding facility shall not be returned to any deer breeding [scientific breeder] facility. Except as provided in Parks and Wildlife Code, §43.363, no breeder deer [No deer] shall be released from a temporary holding facility during an open season or the 10-day period immediately preceding [within ten days of] an open season [unless the antlers immediately above the pedicel have been removed].

[(3) An individual who does not possess a scientific breeder's permit may possess deer under a transfer permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from a scientific breeder for purposes of release.]

(e) Transfer permit.

(1) A transfer permit is valid for 48 consecutive hours from the time of activation.

(2) A transfer permit authorizes the transfer of breeder deer to one and only one receiver.

(3) A transfer permit is activated only by:

(A) notifying the Law Enforcement Communications Center in Austin prior to the transport of any breeder deer; or

(B) utilizing the department's web-based activation mechanism prior to the transport of any breeder deer.

(4) No person may possess a [A person in possession of] live breeder deer at any place other than within a permitted facility unless that person also possesses [shall also possess] on their person a department-issued transfer permit legibly indicating, at a minimum:

(A) the species, sex, and unique number of each breeder deer in possession;

(B) the source and destination facilities, or, if applicable, the specific release location for each breeder deer in possession;

(C) the date and time that the permit was activated.

(5) Not later than 48 hours following the completion of all activities under a transfer permit, the permit shall be:

(A) legibly completed and faxed to the Wildlife Division in Austin by the person designated on the permit as the party responsible for notification of the department; or

(B) completed and submitted using the department's web-based permit-completion mechanism.

(6) A deer [scientific] breeder may transport breeder deer without a transfer permit from a permitted facility to a licensed veterinarian, provided:

(A) the transport occurs by the most feasible direct route;

(B) the breeder deer are not removed from the means of transportation at any point between the permitted facility and the veterinary facility; and

(C) the breeder deer do not leave this state.

(f) Marking of vehicles and trailers. No person may possess, transport, or cause the transportation of breeder deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting breeder deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a deer [scientific] breeder, the inscription shall be "TXD". If the person is a deer [scientific] breeder, the inscrip-

tion shall be the deer [~~scientific~~] breeder serial number issued to the person.

§65.611. Prohibited Acts.

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, or R shall not be commingled with deer held in a permitted deer breeding [~~scientific breeder~~] facility.

(b) A person commits an offense if that person places or holds breeder deer in captivity at any place or on any property other than property for which a deer [~~scientific~~] breeder's permit, or a permit authorized under other provisions of this title or Parks and Wildlife Code, is issued, except that a permittee may transport and temporarily hold breeder deer at another location for breeding, nursing, or veterinary purposes as provided in this subchapter.

[~~(c) No live deer taken from the wild may be possessed under a scientific breeder's permit or held in a scientific breeder's facility.~~]

(c) [~~(d)~~] No breeder deer shall be held in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another.

(d) [~~(e)~~] Possession of a deer [~~scientific~~] breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

[~~(f) No scientific breeder shall hunt or kill, or allow the hunting or killing of deer held pursuant to this subchapter.~~]

(e) [~~(g)~~] No deer [~~scientific~~] breeder shall exceed the number of breeder deer allowable for the permitted facility, as specified by the department on the deer [~~scientific~~] breeder's permit.

[~~(h) No person may sell deer to another person unless either the purchaser or the seller possesses a permit valid for that specific transaction.~~]

(f) [~~(i)~~] Except as provided in this subsection, no person may possess a deer acquired from an out-of-state source. This subsection does not apply to breeder deer lawfully obtained prior to June 21, 2005 [~~the effective date of this subsection~~].

§65.612. Disposition of Deer.

(a) Upon termination, suspension, or revocation of a deer [~~scientific~~] breeder's permit, the permittee shall dispose of all breeder deer covered by the permit.

(b) Breeder deer [~~Deer~~] may be disposed of by sale or donation to another deer [~~scientific~~] breeder, by sale or donation to a holder of a zoological permit, or by release to the wild as specifically authorized by the department.

(c) Breeder deer [~~Deer~~] still in possession 30 days following termination, revocation, or suspension of a permit shall be disposed of at the discretion of the department.

(d) Disposition of all breeder deer shall be at the expense of the permittee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706072

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 389-4775

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SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

31 TAC §65.607

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Parks and Wildlife Code, §43.357, which authorizes the commission to make regulations governing the possession of breeder deer held under Parks and Wildlife Code, Chapter 43, Subchapter L; the recapture of lawfully possessed breeder deer that have escaped from the facility of a deer breeder; permit applications and fees; reporting requirements; procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer; the endorsement of a deer breeder facility by a certified wildlife biologist; the number of breeder deer that a deer breeder may possess; and the dates for which a deer breeder permit is valid.

The proposed repeal affects Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.607. Marking of Deer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706073
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD

SUBCHAPTER A. BOND REVIEW RULES

34 TAC §§181.1 - 181.6, 181.9 - 181.11

The Texas Bond Review Board (BRB) proposes amendments to Chapter 181, Subchapter A, §§181.1 - 181.6 and §§181.9 - 181.11, concerning Bond Review Rules. Texas Government Code, Chapter 1231 was amended by the Texas Legislature 80th Regular Session, Senate Bill 1332 effective September 1, 2007. The proposed amendments to the rules are to address

the changes in Texas Government Code, Chapter 1231 and to clarify processes related to the issuance of state securities.

Robert Kline, Executive Director for the BRB, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments as proposed.

Mr. Kline has also determined that for each year of the first five years the amendments are in effect the public will benefit from clearer debt issuance and reporting procedures. There will be no effect on small businesses. There is no additional anticipated economic cost to persons to comply with the amendments as proposed.

Comments on the proposal may be submitted in writing to Robert Kline, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to *kline@brb.state.tx.us* or faxed to (512) 475-4802.

The amendments are proposed under Texas Government Code, §1231.022, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

The proposed amendments implement the Texas Government Code, Chapter 1231.

§181.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Bond Review Board, created under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 codified as Chapter 1231, Government Code.

(2) Interest rate management agreement--An agreement that provides for an interest rate transaction, including a swap, basis, forward, option, cap, collar, floor, lock, or hedge transaction, for a transaction similar to those types of transactions, or for a combination of any of those types of transactions. The term includes:

(A) a master agreement that provides standard terms for transactions;

(B) an agreement to transfer collateral as security for transactions; and

(C) a confirmation of transactions.

(3) [~~(2)~~] State security--

(A) an obligation, including a bond, issued by:

(i) a state agency;

(ii) an entity expressly created by statute and having statewide jurisdiction; or

(iii) any other entity issuing a bond or other obligation on behalf of the state or on behalf of any entity listed in clause (i) or (ii) of this subparagraph; [~~or~~]

(B) an installment sale or lease-purchase obligation issued by or on behalf of an entity listed in subparagraph (A) [~~clauses~~] (i), (ii), or (iii) of this paragraph [~~subparagraph~~] that has a stated term of longer than five years or has an initial principal amount of greater than $250,000; or [~~.~~]

(C) an obligation, including a bond, that is issued under Chapter 53, Education Code, at the request of or for the benefit of an institution of higher education as defined by §61.003, Education Code, other than a public junior college.

[~~(C) References in these rules to a board member include the person designated to act on their behalf, except as noted in §181.4(b) of this title (relating to Meetings).~~]

§181.2. Notice of Intention to Issue.

(a) Unless exempt pursuant to §181.9 of this title (relating to State Exemptions), an issuer intending to issue state securities shall submit a written or electronic notice of intention to issue to the bond finance office no later than the last Wednesday of the month prior to the month requested for Board consideration. [~~The Executive Director of the bond finance shall forward one copy of the notice to each member of the Board.~~] Prospective issuers are encouraged to file the notice of intention as early in the issuance planning stage as possible. [~~The notice is for information purposes only, to facilitate the scheduling of Board review activities.~~] A notice of intention under this subsection is not required prior to each new issuance of commercial paper if the issuer's commercial paper program has been approved by the Board or if it is exempt from approval pursuant to the provisions of §181.9 of this title. [~~However, a notice of intention to issue state securities in the form of commercial paper notes must be given on an annual or more frequent basis, as needed, identifying the list of projects and estimated amounts of commercial paper to be issued.~~]

(b) A notice of intention to issue under this section shall include:

(1) A brief description of the proposed issuance, including, but not limited to, the purpose, the tentative amount, proposed security, type of interest and any related credit agreements; [~~and a brief outline of the proposed terms;~~]

(2) the proposed timing of the issuance with a tentative date of sale and a tentative date for closing, or if the state securities are to be issued in the form of commercial paper notes, the period over which the state securities will be issued for projects to be financed;

(3) A request to have the issue of state securities scheduled for consideration by the Board during a specified bi-monthly meeting; and

(4) An agreement to submit the required application described in §181.3 of this title (relating to Application for Board Approval of State Security [~~Bond~~] Issuance) no later than the first Tuesday of the month in which the applicant requests Board consideration.

(c) An issuer may reschedule the date requested for Board consideration of the state securities by submitting an amended notice of intention at any time prior to the application date in the same manner as provided in this section.

(d) The requested date for Board consideration shall be granted whenever possible. If at the Board's discretion, it becomes necessary to change the date of the Board meeting for consideration of the proposed issuance of state securities, notice of such change shall be sent to the issuer as soon as possible.

[~~(d) The requested date for Board consideration shall be granted whenever possible; however, if it becomes necessary in the Board's discretion to change the date of the Board meeting for consideration of the proposed issuance of state securities, written notice of such change shall be sent to the issuer as soon as possible. Priority scheduling for consideration at Board meetings shall be given to refunding issues and to those state securities which also require a submission to the Bond Review Board to obtain a private activity bond allocation.~~]

(e) An issuer intending to issue state securities that are exempt from approval pursuant to §181.9 of this title shall submit during regular business hours a written or electronic notice to the bond finance office at least five business days prior to the date the securities are to be issued. [~~The Executive Director of the bond finance office shall forward one copy of the notice to each member of the Board.~~] Prospective issuers are encouraged to file the notice of intention as early in the issuance planning stage as possible. [~~The notice shall be in a format determined by the Executive Director of the bond finance office. An exempt issuer may file a notice of intent at any time, however, in order for an issuer to be considered at the next regularly scheduled planning session, if required by the Board pursuant to §181.9(d) of this title, the respective a notice of intent must be submitted to the bond finance office no later than the last Tuesday of the month prior to a regularly scheduled Board meeting.~~]

(1) To be considered at the next regularly scheduled planning session, if required by the Board pursuant to §181.9(f) of this title, the notice of intent must be submitted to the bond finance office no later than the last Tuesday of the month prior to a regularly scheduled Board meeting.

(2) Exempt issuers are required to submit a notice of intent which must contain:

(A) a completed exempt issuer state debt notice of intent in the form required by the bond finance office;

(B) proposed debt service schedule;

(C) proposed cash flow schedule, if applicable;

(D) proposed sources and uses statement;

(E) timetable of the financing;

(F) derivatives program summary, if an interest rate management agreement is to be associated with the state security;

(G) evidence that all necessary approvals for the issuance of the state securities or the project to be financed, including authorization of the Issuer's Board to proceed with the financing, have been obtained; and

(H) Board memorandum for the proposed transaction prepared for issuer's governing board, if available.

[~~(f) A notice of intention is not required for the issuance of state securities in the form of commercial paper that are exempt pursuant to §181.9 of this title.~~]

§181.3. Application for Board Approval of State Securities [~~Bond~~] Issuance.

(a) An officer or entity may not issue state securities unless the issuance has been approved or exempted from review by the Board. An officer or entity that has not been granted an exemption from review by the Board and that proposes to issue state securities shall apply for Board approval by filing one application with original signatures and nine copies with the Executive Director of the bond finance office. The Executive Director of the bond finance office shall forward one copy of the application to each member of the Board and one copy to the Office of the Attorney General.

(b) Applications must be filed with the bond finance office no later than the first Tuesday of the month in which the applicant requests Board consideration. Applications filed after that date will be considered at the regular meeting only with the approval of the Chair or two or more members of the Board.

(c) An application for approval of a lease-purchase agreement to be deemed complete must include:

(1) a completed lease purchase application form in the form required by the bond finance office;

(2) documentation of all necessary approvals from any state boards or state agencies;

(3) draw schedule, if applicable;

(4) proposed amortization schedule; and

(5) if lease purchasing through a guaranteed energy savings program, a copy of the proposed contractual agreement, a copy of the third party review, and any other documentation related to the guarantee.

[~~(1) A description of, and statement of need for, the facilities or equipment being considered for lease purchase;~~]

[~~(2) The statutory authorization for the lease-purchase proposal;~~]

[~~(3) Evidence of all necessary approvals from any state boards, state agencies, etc.; and~~]

[~~(4) a detailed explanation of the terms of the lease-purchase agreement, including, but not limited to, amount of purchase, trade-in allowances, interest charges, service contracts, etc.~~]

(d) An application for all state securities other than lease-purchase agreements to be deemed complete must include:

(1) a completed state debt application in the form required by the bond finance office;

(2) [~~(1)~~] documentation [~~Evidence~~] that all necessary approvals of the issuance of the state securities or the project to be financed with the proceeds of the state securities have been obtained from the appropriate state boards or state agencies except:

(A) the [~~The~~] approval of the state securities by the Attorney General;

(B) the approval of or review of the projects by the Texas Higher Education Coordinating Board to be financed with the proceeds of the state securities issued by the board of regents of an institution of higher education pursuant to a system-wide revenue financing system; and

(C) environmental [~~Environmental~~] approvals and permits;

(3) if a blind pool financing, a copy of the demand survey or justification indicating reasonable expectation to lend proceeds;

(4) [~~(2)~~] a [~~A~~] substantially complete draft or summary of the proposed resolution, order, or ordinance providing for the issuance of the state security [~~bonds~~];

(5) copy of preliminary official statement, if available;

(6) proposed cash flow;

(7) proposed draw schedule, if applicable;

(8) proposed sources and uses statement;

(9) timetable of the financing;

(10) derivatives program summary, if an interest rate management agreement is to be associated with the state security; and

(11) Board memorandum for the proposed transaction prepared for issuer's governing board, if available.

[~~(3) Where applicable, evidence of review of proposed issuance by local entities;~~]

[(4) a brief description of the program under which the state securities are proposed to be issued, which may include a reference to a legislative enactment or to existing rules if the program is established in accordance with an existing statute or existing rules;]

[(5) the applicant's plans for use of state security proceeds, including a description of, statement of the need for, and cost of each specific project for which security proceeds are proposed to be used;]

[(6) the applicant's plans for the administration and servicing of the state securities to be issued, including, when applicable, a disbursement schedule of state security proceeds, the proposed flow of funds, the sources and methods of repayment, and an estimated debt-service schedule;]

[(7) a description of the applicant's investment provisions for state security proceeds, including any specific provisions for safety and security and a description of the duties and obligations of the trustee and paying agent/registrar as applicable;]

[(8) A timetable for financing that contains dates of all major steps in the issuance process, including all necessary approvals;]

[(9) If the applicant has authority to issue both general obligation and revenue bonds and the proposed issuance is of one of these, a statement of the applicant's reasons for its choice of type of state securities;]

[(10) A statement of the applicant's estimated costs of issuance, listed on an item by item basis, including, as applicable, the estimated costs for:]

[(A) bond counsel]

[(B) financial advisor]

[(C) paying agent/registrar]

[(D) rating agencies]

[(E) official statement printing]

[(F) bond printing]

[(G) trustee]

[(H) credit enhancement]

[(I) liquidity facility]

[(J) miscellaneous issuance costs;]

[(11) an estimate, if state security sale is negotiated, of underwriter's spread, specified in the following components and accompanied by a list of underwriter's spreads from recent comparable bond issues:]

[(A) management fee]

[(B) underwriter's fees]

[(C) selling concessions]

[(D) underwriter's counsel]

[(E) other costs;]

[(12) a list of the firms providing the services reported in paragraphs (10) and (11) of this subsection and a statement of prior representation of the issuer by each firm;]

[(13) a justification of the decision of whether or not to apply for municipal bond insurance or other credit enhancement, including a comparison of expected bond ratings and borrowing costs for the issue with and without the particular enhancement(s) considered;]

[(14) copy of preliminary official statement, if available;]

[(15) a statement of any potential liability of the general revenue fund or any other state funds resulting from the issuance;]

[(16) a copy of any preliminary written review of the issuance that has been made by the attorney general;]

[(17) a statement addressing the participation of women and minorities. The purpose of this section is to promote economic opportunity by affording equal access to the procurement of contracts for professional services for the financing of bonds by state issuers. Therefore, the following information about each participant (including, but not limited to, bond counsel, underwriters, underwriter's counsel, and financial advisor) must be included:]

[(A) the degree of ownership and control of each participant firm by minorities and women;]

[(B) the number and percentage of professionally employed women and minorities in each participant's firm; and]

[(C) a brief description of the effort made by each participant to encourage and develop participation of women and minorities. This description can include internal firm recruitment efforts, any offers tendered for apportioning responsibilities by subcontract or joint venture, and the equal opportunity goals and policies of each participant's firm.]

[(18) the notification procedures used by or on behalf of the issuer to select the participants referenced in paragraph (17) of this subsection.]

(e) [(19)] Applications to authorize the issuance of a state security in the form of commercial paper notes or for the approval of program proceedings authorizing the periodic issuance of commercial paper notes [for the approval of proceedings authorizing the issuance of state securities in the form of commercial paper notes] shall contain the information required by subsection (d) of this section [paragraphs (1) - (18) of this subsection] to the extent it is available or capable of being determined. [An application for commercial paper or other similar short-term state securities must contain a description of any project or projects that will be permanently financed with tuition revenue bonds or state securities secured with general revenues of the state. Such commercial paper or short term securities to fund any project or projects that will be permanently financed with general revenues of the state may not be issued unless the issuance for the project or projects is specifically approved by the Board.]

(f) Commercial paper notes to fund any project or projects that will be permanently financed with tuition revenue bonds or general revenues of the state may not be issued unless the issuance of the notes, or the project or projects, have been specifically approved by the Board.

[(e) In addition to the information required by subsection (c) or (d) of this section, an application under this section may include any other relevant information the applicant wants to submit to the Board.]

(g) [(f)] At any time before the date for consideration of an application by the Board, an applicant may withdraw the application. Revisions to an application must be submitted in writing not less than 72 hours prior to the Board [board] meeting.

(h) A member of the Board or bond finance office staff may require additional information to be submitted with respect to a complete application for state securities.

§181.4. Meetings.

(a) The regular meeting of the Board shall be held the Thursday following the third Tuesday of alternate months beginning in January.

(b) The Chair may call additional meetings of the Board and is responsible for filing notice of meetings as required by Chapter 551, Government Code, and giving timely notice of meetings to members of the Board. On the petition of two or more members of the Board, the Chair shall call an additional meeting of the Board or cancel a meeting.

(c) A planning session will be held regarding applications pending before the Board on or before the second Tuesday of alternate months beginning in January. Planning sessions regarding applications to be heard at additional meetings of the Board will be held as far in advance of the additional Board meeting as is practicable. [~~At a planning session, Board members, their designated representatives, or their staff representatives may discuss pending applications. Applicants may be required to attend a planning session and may be asked to make a presentation and answer questions regarding their application. Applicants may be asked to submit written answers to questions regarding their application in lieu of, or in addition to, their attendance at a planning session.~~]

(1) At a planning session, Board members, their designated representatives, or their staff representatives may discuss pending applications.

(2) Applicants may be required to attend a planning session and may be asked to make a presentation and answer questions regarding their application. Applicants may be asked to submit written answers to questions regarding their application in lieu of, or in addition to, their attendance at a planning session.

(d) At a meeting of the Board, the Board may allow an applicant to make an oral presentation to the Board.

(e) At a meeting, the Board may, by order, resolution, or other process adopted by the Board, approve an issuance of state securities as proposed in a completed [~~the~~] application; may approve an issuance of state securities on conditions stated by the Board for either a completed or incomplete application; or may fail to act on a proposed issuance of state securities; and may approve tuition revenue projects for financing. [~~If the Board does not act on a proposed issuance during the meeting at which the application is scheduled to be considered, the application is no longer valid on the occurrence of the earlier of the expiration of 45 days from the date of the meeting at which the application was scheduled to be considered or immediately following the Board's next meeting, if the Board fails to act on the proposed issuance at that meeting. If an application becomes invalid under this subsection, the applicant may file a new application for the proposed issuance.~~]

(f) At a planning session or meeting, the Board may discuss state securities under the state exemption process without such security being required to follow the formal approval process under §181.9(d) of this title.

(g) If the Board does not act on a proposed issuance during the meeting at which the application is scheduled to be considered, the application is no longer valid on the occurrence of the earlier of the expiration of 45 days from the date of the meeting at which the application was scheduled to be considered or immediately following the Board's next meeting, if the Board fails to act on the proposed issuance at that meeting. If an application becomes invalid under this subsection, the applicant may file a new application for the proposed issuance.

(h) [~~(f)~~] The Executive Director shall notify applicants in writing of any action taken regarding their application. A letter of approval shall contain the terms and conditions of the issue as approved by the Board. A copy of the approval letter shall be forwarded to the Office of the Attorney General. Issuers must inform the Executive Director of any material changes to [~~the aspects of~~] their application [~~that are specified in the approval letter~~]. Such changes may prompt reconsideration of an [~~the~~] application approval by the Bond Review Board and require the application to come before the Board prior to issuance. [~~A copy of the approval letter shall be forwarded to the Office of the Attorney General.~~]

(i) [~~(g)~~] If applicable law requires the approval by the Attorney General of an issuance of state securities that are not exempt from review by the Board, Attorney General approval must be obtained after approval by the Board.

(j) [~~(h)~~] If there is a dispute among members regarding the conduct of Board meetings, standard parliamentary rules shall apply.

§181.5. Submission of Final Report.

(a) Within 60 days after the [~~signing of a lease-purchase agreement or~~] delivery of the state securities and receipt of the state security proceeds, the issuer [~~or purchaser, as applicable,~~] shall submit one original of a final report in the form required by [~~to~~] the bond finance office [~~and a single copy of the final report to the Texas Comptroller of Public Accounts, provided that for state securities issued in the form of commercial paper notes, the reporting requirements of subsection (d) shall be applicable~~].

(1) For state securities issued in the form of lease purchases, the reporting requirements of subsection (b) of this section shall be applicable.

(2) For state securities issued in the form of commercial paper notes, the reporting requirements of subsection (c) of this section shall be applicable.

[~~(b) A final report for lease purchases must include a detailed explanation of the terms of the lease-purchase agreement, including, but not limited to, amount of purchase, trade-in allowance, interest charges, service contracts, etc.~~]

(3) [~~(c)~~] A final report for [~~all~~] state securities, [~~bonds~~] other than lease-purchases and commercial paper, [~~lease-purchase agreements~~] must include:

(A) [~~(1)~~] all actual costs of issuance[~~, including, as applicable, the specific items listed in §181.3(d)(10) and (11),~~] as well as the underwriting spread for competitive financings, [~~and~~] the private placement fee for private placements, all closing costs, and any other costs incurred during the issuance process; [~~and~~]

(B) [~~(2)~~] a complete bond transcript, including the preliminary official statement and the final official statement, private placement memorandum, if applicable, or any other offering documents as well as all other executed documents pertaining to the issuance of the state security; and [~~bonds. The issuer also must submit a copy of the bid form or a listing of orders and allotments and a final debt service schedule (if applicable).~~]

(C) The issuer must submit a copy of the bid form or a listing of orders and allotments, if applicable, and a final or estimated debt service schedule.

(b) Within 90 days after the signing of a lease purchase the purchaser shall submit an original lease purchase final report to the bond finance office. A final report for lease purchases must include a detailed explanation of the terms of the lease-purchase agreement, including but not limited to, amount of purchase, trade-in allowance, interest charges, service contracts, remaining draw amount if applicable, and a final or estimated amortization as applicable.

(c) [~~(d)~~] In lieu of the reporting requirements of subsection (a) of this section [~~§181.5(a)~~], an issuer of state securities issued in the form of commercial paper notes shall submit [~~an original of~~] a report to the bond finance office pursuant to §181.10(c) of this title [~~for each~~

~~semi-annual period for~~] so long as the issuer has authority to issue commercial paper under the program proceedings approved by the Board or exempt from approval pursuant to §181.9 of this title. [~~The report shall contain the following information with respect to the semi-annual period immediately preceding the date of filing of the report:~~]

[~~(1) the aggregate principal amount of commercial paper that the issuer is authorized to issue and have outstanding at any one time;~~]

[~~(2) the aggregate principal amount of commercial paper outstanding as of the end of such semi-annual period;~~]

[~~(3) the aggregate principal amount of commercial paper issued to fund project costs during such semi-annual period;~~]

[~~(4) a list of the projects for which commercial paper was issued during such semi-annual period;~~]

[~~(5) as used in this subsection, term "semi-annual period" means each of the following six-month periods ending the last day of February and August of each year.~~]

[~~(e) Submission of this final report is for the purpose of compiling data and disseminating information to all interested parties. The cost of reproduction of any and all portions of the final documents shall be borne by each requesting party.~~]

[~~(f) The bond finance office shall prepare and make available to the members of the Board a summary of each final report within 30 days after the final report has been submitted by the issuer. This summary shall compare the estimated costs of issuance for the items listed in sections 181.3(d)(8) and (9) contained in the application for approval with the actual costs of issuance listed in section 181.5(c)(1) submitted in the final report. This summary must also include other information that in the opinion of the bond finance office represents a material addition to or a substantial deviation from the application for approval.~~]

§181.6. Official Statement.

[~~(a)~~] The official statement or any other offering documents prepared in connection with issuance of state securities approved by the Board [~~board~~] must conform, to the extent feasible, to the most recent Disclosure Guidelines for State and Local Government Securities published by the Government Finance Officers Association. [~~The preliminary official statement or other offering documents may be submitted to and reviewed by the Executive Director of the bond finance office prior to mailing. Review of the preliminary official statement by the Executive Director of the bond finance office is not to be interpreted as a certification as to the accuracy, timeliness, and completeness of the specific data in the document. These standards remain the responsibility of the provider(s) of the data.~~]

[~~(b) The comptroller shall certify the accuracy and completeness of statewide economic and demographic data, as well as revenues, expenditures, current fund balances, and debt-service requirements of bonded indebtedness of the state contained in the preliminary official statement. This data shall be used unchanged in the final official statement unless changes are approved in writing by the comptroller. The comptroller may execute a waiver of any part of this subsection.~~]

§181.9. State Exemptions.

(a) The Board may exempt certain state securities from formal approval by the Board. Exemptions include the following: [~~The Board may from time to time publish in the *Texas Register* a list of state securities that are exempt.~~]

[~~(b) Specific exemptions include the following:~~]

(1) [~~Effective January 1, 2004,~~] Texas Department of Housing and Community Affairs multifamily conduit housing transactions are exempt unless seeking an ad valorem tax reduction or exemption.

(2) [~~Effective January 1, 2004,~~] Texas State Affordable Housing Corporation multifamily conduit housing transactions are exempt unless seeking an ad valorem tax reduction or exemption.

(3) Effective January 1, 2008, Texas Public Finance Authority Charter School Finance Corporation conduit transactions are exempt.

(4) [~~(3)~~] State securities secured by the general revenues of the state issued by the Veterans Land Board, the Texas Water Development Board or the Higher Education Coordinating Board determined by the Executive Director to be self-supporting and state securities issued by the Texas Water Development Board pursuant to the clean water state revolving fund program under Subchapter J, Chapter 15, Water Code and Subchapter I, Chapter 17, Water Code.

(5) [~~(4)~~] Self-supporting revenue state securities issued by an institution of higher education, having an un-enhanced long-term debt rating of at least AA- [~~long-term rating~~] or its equivalent, and that are not secured by the general revenue of the state; provided, however, that an issue of state securities to be issued to finance the cost of a tuition revenue project shall not be exempt unless each tuition revenue bond project has been approved for financing by the Board. Any state securities issued to finance a tuition revenue bond project or projects approved by the Board must be issued by the end of the fiscal year in which such project or projects were approved by the Board. State securities may not be issued for any project not financed in the fiscal year in which the Board approved such project until the Board re-approves such project.

(6) State securities that are advance refunding or refinancing transactions that have a net present value savings of at least 3%; current refunding or refinancing transactions that have a net present value savings of at least 2%; refunding or refinancing transactions that are removing restrictive bond covenant requirements; or self-supporting revenue security issues that have no general revenue impact to the state.

(b) [~~(c)~~] An issuer of state securities exempted pursuant to this section must still comply with §181.2 and §181.5 of this title (relating to Notice of Intention to Issue and Submission of Final Report).

(c) Exempt issuers are required to submit a notice of intent pursuant to §181.2(e) of this title. Upon receipt of all required information, the notice shall be forwarded to the Board for review.

(d) At the written request of one or more members of the Board given to an issuer within four business days of the notice forwarded pursuant to subsection (c) of this section [~~of submission of a notice pursuant to §181.2(e) of this title~~], an issuer is required to follow the formal approval process regardless of this section; provided, however, if an issuer is required to follow the formal approval process pursuant to this section, the notice of intent will be treated as a completed application for purposes of §181.3 of this title.

[~~(e) In lieu of action by the Board, the Executive Director is authorized to: approve refunding or refinancing transactions that have a net present value savings of at least 3%, or that are removing restrictive bond covenant requirements; and to approve self-supporting revenue bond issues that have no general revenue impact to the state. The Executive Director shall notify in writing approval, if approved, of the issuance of such state securities within ten business days or receipt by~~

~~the bond finance office of an application submitted by the issuer pursuant to §181.3 of this title (relating to Application for Board Approval of State Bond Issuance).~~]

§181.10. State Debt [~~Annual~~] Issuer Reports [~~Report~~].

(a) All issuers whose state securities are subject to review by the Board must file state debt issuer reports with the bond finance office on a semi-annual basis. Reports shall be submitted no later than March 15 for the six month period ending the last day of February and no later than September 15 for the six month period ending August 31. [~~All state security issuers whose bonds are subject to review by the board must file a report with the bond finance office no later than September 15 of each year, to include:~~]

(b) The semi-annual reports shall include:

(1) the investment status of all unspent state security proceeds (i.e., the amount of proceeds, name of institution, type of investment program or instrument, maturity, and interest rate);

(2) an explanation of any change during the fiscal year previous to the deadline for this report, in the debt-retirement schedule for any outstanding state security issue (e.g. exercise of redemption provision, conversion from short-term to long-term securities, etc.);

(3) a description of any state security issues expected during the fiscal year, including type of issue, estimated amount, and expected month of sale; [~~and~~]

(4) a list of all state security issues outstanding and corresponding debt service schedules for all securities [~~bonds~~] outstanding in a digital and hard copy format; and [~~.~~]

(5) a list of all interest rate management agreements, including the associated issue name, effective and termination dates, original and current notional amounts, terms of the agreement (fixed rate paid/variable rate received, variable rate paid/variable rate received), true interest cost, counterparty and counterparty ratings.

(c) An issuer of state securities issued in the form of commercial paper notes shall submit as part of the required semi-annual reports the following information for so long as the issuer has authority to issue commercial paper under program proceedings approved by the Board or exempt from approval pursuant to §181.9 of this title. The report shall contain the following information:

(1) the aggregate principal amount of commercial paper that the issuer is authorized to issue and have outstanding at any one time;

(2) the aggregate principal amount of commercial paper outstanding as of the end of such semi-annual period;

(3) the aggregate principal amount of commercial paper issued to fund project costs during such semi-annual period; and

(4) a list of the projects for which commercial paper was issued during such semi-annual period.

§181.11. Filings of Requests for Proposal.

[~~The Bond Review Board wishes to encourage use of the request for proposal process to maximize participation in the state security issuance process.~~] Any state security issuer whose securities are subject to review by the Board [~~board~~] is requested[~~, for information purposes only,~~] to submit to the Executive Director at the time of distribution one copy of any request for proposal for consultants prepared in connection with the planned issuance of state securities. [~~The bond finance office, upon request, will make the request for proposals available to consultants, other state security issuers and the general public.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705973
Piper Montemayor
Senior Financial Analyst
Texas Bond Review Board
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 475-4805

SUBCHAPTER B. PUBLIC SCHOOL FACILITIES FUNDING PROGRAM RULES

34 TAC §§181.21, 181.23, 181.25, 181.27, 181.29, 181.31, 181.33, 181.35

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Bond Review Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Bond Review Board (BRB) proposes the repeal of Chapter 181, Subchapter B, §§181.21, 181.23, 181.25, 181.27, 181.29, 181.31, 181.33, and 181.35, concerning Public School Facilities Funding Program Rules. The public school facilities funding program has been repealed by the Texas Legislature 79th Regular Session, House Bill 1106 effective June 18, 2005. The Rules have become obsolete and are no longer needed.

Robert Kline, Executive Director for the BRB, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal as proposed.

Mr. Kline has also determined that for each year of the first five years the repeal is in effect the public will benefit. There will be no effect on small businesses. There is no anticipated economic cost to persons to comply with the repeal as proposed.

Comments on the proposal may be submitted in writing to Robert Kline, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to *kline@brb.state.tx.us* with a copy to *montemayor@brb.state.tx.us* or faxed to (512) 475-4802.

The repeal is proposed under Chapter 1231, Texas Government Code, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

Texas Government Code, Chapter 1402 is affected by the proposed repeal.

§181.21. Definitions.

§181.23. Application Procedures.

§181.25. District Qualifications.

§181.27. Eligible Projects and Costs.

§181.29. Bond Issuance.

§181.31. Finance Administration.

§181.33. Remedies for Late Payment or Default.
§181.35. Permanent School Fund Guarantee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200705972
Piper Montemayor
Senior Financial Analyst
Texas Bond Review Board
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For further information, please call: (512) 475-4805

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER C. PERSONNEL AND EMPLOYMENT POLICIES

37 TAC §1.42

The Texas Department of Public Safety proposes new §1.42, concerning Veteran's Preference Grievance Procedure. New §1.42 is necessary due to the passage of H.B. 1275, Acts 2007, 80th Legislature, Regular Session, codified in Chapter 657, Government Code, §657.010. This new law allows for an individual entitled to a veteran's employment preference and who is aggrieved by a decision of a public entity to appeal the decision to the governing body. The new section provides a procedure by which the department can adequately address the grievant's concerns within the time limits imposed by the statute.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure the public is aware of the procedure for appealing a veteran's preference decision. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Paula Logan, Human Resources Director, Texas Department of Public Safety, Human Resources Bureau, P.O. Box 4087, Austin, Texas 78773-0251, (512) 424-5920.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §657.010.

Texas Government Code, §411.004(3) and §657.010 are affected by this proposal.

§1.42. Veteran's Preference Grievance Procedure.

(a) Complaints regarding veteran's preference should be addressed to: Human Resources Director, Human Resources Bureau, 5805 North Lamar Blvd., P.O. Box 4087, Austin, TX 78773-0251, who has been designated by the Commission to receive complaints and coordinate compliance efforts. The Human Resources Director shall respond in writing to the complaint not later than the fifteen (15) business days after the date the department receives the complaint. The written response shall explain that the complainant can request consideration of the case by the Public Safety Commission at the next available public meeting and instructions on how to request the consideration before the Commission. The request for consideration should be made within fifteen (15) business days of the date the response is mailed to the complainant.

(b) All veteran's preference complaints shall be reported to the Commission and those requesting consideration will be placed on the agenda of the next available meeting as personnel issues. The Commission may render a different employment decision than the decision that is the subject of the complaint if the Commission determines that the veteran's preference was not properly applied. Those individuals requesting consideration by the Commission will receive written notice of the Commission's decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200705976
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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SUBCHAPTER R. ACCOUNTING PROCEDURES

37 TAC §1.231

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety (department) proposes the repeal of §1.231, concerning Protest/Dispute Resolution/Hearings. Repeal of the section is necessary due to substantial changes being made and is being filed simultaneously with the proposal for a new §1.231 which is necessary in order to comply with §2155.076 of the Government Code regarding consistent rules and document retention.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that, for each year of the first five-year period the proposed repeal is in effect, the anticipated public benefit resulting from the repeal will be current and updated rules. There is no anticipated adverse economic effect on small businesses, micro-businesses, or individuals.

The department has determined that Chapter 2007 of the Government Code does not apply to this proposed rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule proposal.

Comments on the proposed repeal may be submitted to Kevin Jones, CTPM, Procurement and Contract Administration, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0130, (512) 424-2071.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, §2155.076.

Texas Government Code, §411.004(3) and §2155.076 are affected by this proposal.

§1.231. Protest/Dispute Resolution/Hearings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200705974
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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37 TAC §1.231

The Texas Department of Public Safety (department) proposes new §1.231, concerning Procedures For Vendor Protests Of Procurements. New §1.231 is necessary in order to promulgate rules to comply with §2155.076 of the Government Code regarding consistent rules and document retention. The proposal is being filed simultaneously with the proposed repeal of current §1.231.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the proposed new section is in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that, for each year of the first five-year period the proposed new section is in effect, the anticipated public benefit resulting from the new section will be current and updated rules. There is no anticipated adverse economic effect on small businesses, micro-businesses, or individuals.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposed rule.

Comments regarding the proposed new section may be submitted to Kevin Jones, CTPM, Procurement and Contract Administration, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0130, (512) 424-2071.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, §2155.076.

Texas Government Code, §411.004(3) and §2155.076 are affected by this proposal.

§1.231. Procedures For Vendor Protests Of Procurements.

(a) Definitions.

(1) "Working days" are Monday through Friday, except national and state holidays as defined by §662.003 of the Texas Government Code. When counting working days, do not count the day of the act or event after which the ten-day period of time begins to run. The last day of the ten-day period is included in the count, unless the last day is a Saturday, Sunday, national holiday or state holiday, in which event the ten-day period runs until the end of the next day which is not a Saturday, Sunday, national holiday or state holiday.

(2) "Interested parties" are all contractors who have submitted bids, offers, responses or proposals for the contract at issue.

(b) Any actual or prospective bidder, offer, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract, may formally protest to the chief of finance. Such protests must be in writing, addressed to the chief of finance and filed within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. A protest is considered filed when received by the chief of finance. Formal protests must conform to the requirements herein and shall be resolved in accordance with the procedure set forth herein. Copies of the protest must be mailed or delivered by the protesting party to all other identifiable interested parties.

(c) In the event of a timely protest under this section, the department shall not proceed further with the solicitation or award of the contract unless the director, after consultation with the end user and the chief of finance, makes a written determination that the award of contract without delay is necessary to protect the best interests of the state.

(d) A formal protest must be sworn and notarized and must contain:

(1) the name and address of the protestor;

(2) appropriate identification of the procurement;

(3) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(4) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (3) of this subsection;

(5) a precise statement of the relevant facts regarding the alleged violation of the statutory or regulatory provision(s) identified in paragraph (3) of this subsection;

(6) an identification of the issue or issues to be resolved regarding the alleged violation of the statutory or regulatory provision(s) identified in paragraph (3) of this subsection;

(7) supporting exhibits, evidence or documents to substantiate the alleged violation of the statutory or regulatory provision(s) identified in paragraph (3) of this subsection, unless not available at the time of filing, in which case the expected availability date shall be indicated;

(8) arguments and authorities in support of the protest; and

(9) an affidavit which affirms that the contents of the protest are true and accurate and that copies of the protest have been mailed or delivered to other identifiable interested parties.

(e) The department will maintain all documentation regarding the purchase in accordance with the department's applicable records retention schedule.

(f) The chief of finance shall have the authority, prior to appeal to the director, to settle and resolve a protest concerning the solicitation or award of a contract. The chief of finance may solicit written responses to the protest from other interested parties.

(g) If the protest is not resolved by mutual agreement, the chief of finance will issue a written determination on the protest.

(1) If the chief of finance determines that no violation of rules or statutes has occurred, the chief of finance shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the chief of finance determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, the chief of finance shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the chief of finance determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, the chief of finance shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(h) The chief of finance's determination on a protest may be appealed by the protesting party to the director. The appeal shall be limited to review of the chief of finance's determination. Copies of the appeal must be mailed or delivered by the appealing party to the other interested parties and must contain an affidavit that such copies have been provided. An appeal of the chief of finance's determination must be in writing and must be received in the director's office no later than ten working days after the protestor's receipt of the chief of finance's determination. The protestor is deemed to have received the chief of finance's determination upon the earliest of the following:

(1) when delivered in hand and a receipt granted;

(2) three days after it is deposited in the United States mail by regular mail; or

(3) at the time it is sent via electronic mail or facsimile.

(i) The director may confer with general counsel in his review of the matter appealed. The director may, in his discretion, refer the matter to the Public Safety Commission for its consideration at a regularly scheduled open meeting or issue a written decision on the protest. A decision issued either by the Public Safety Commission in open meeting or in writing by the director shall be the final administrative action of the department.

(j) When a protest has been appealed to the director under subsection (h) of this section and has been referred to the Public Safety Commission by the director under subsection (i) of this section, the following requirements shall apply.

(1) The director's office shall mail copies of the appeal and responses of interested parties, if any, to the commissioners.

(2) All interested parties who wish to make an oral presentation at the open meeting shall notify the director at least 48 hours in advance of the open meeting.

(3) The Public Safety Commission may consider oral presentations and written documents presented by staff and interested parties. The chairman of the Public Safety Commission shall set the order and amount of time allowed for presentations.

(4) The Public Safety Commission's determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.

(k) Unless good cause for delay is shown or the department determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not timely filed will not be considered.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200705975
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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CHAPTER 5. CRIMINAL LAW ENFORCEMENT

SUBCHAPTER A. INVESTIGATION

37 TAC §5.1, §5.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §5.1 and §5.2, concerning Investigation. Repeal of §5.1 is necessary due to the addition of a new §5.1 which relates to chapter definitions. The repeal is filed simultaneously with a proposal which will renumber repealed §5.1 as new §5.2. The repeal of current §5.2 is necessary due to a new §5.2 being proposed and because this section is being simultaneously proposed as a new §5.52 in Subchapter D.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clarification of department policy regarding criminal investigations. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the repeal may be submitted to Mike Gougler, Assistant Commander, Criminal Intelligence Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0420, (512) 424-2200.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.0096.

Texas Government Code, §411.004(3) and §411.0096 are affected by this proposal.

§5.1. Conduct of a Criminal Investigation.

§5.2. Memorandum of Understanding with Criminal Justice Division of the Office of the Governor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §5.1, §5.2

The Texas Department of Public Safety proposes new §5.1 and new §5.2, concerning General Provisions. New §5.1 relates to chapter definitions. New §5.2 is necessary in order to clarify department policy regarding criminal investigations. In addition, the title of the subchapter is changed to better reflect the content of the subchapter. The new rules will replace previous rules proposed for repeal.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of department policy regarding criminal investigations. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Mike Gougler, Assistant Commander, Criminal Intelligence Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0420, (512) 424-2200.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§5.1. Chapter Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Department--means the Texas Department of Public Safety.

(2) Director--means the director of the department or his designee.

(3) 28 CFR--means 28 Code of Federal Regulations, Part 23.1 et seq., as promulgated by the U.S. Department of Justice, Office of Justice Programs.

§5.2. Conduct of a Criminal Investigation.

(a) An officer or other member of the Criminal Law Enforcement Division may conduct a criminal investigation when adequate suspicion exists that a crime has been, is being, or is about to be committed. The investigation shall ascertain the facts:

(1) to determine the existence of:

(A) reasonable suspicion to support the temporary detention of a suspect for further investigation or identification;

(B) probable cause to support a search or arrest warrant; or

(C) probable cause to support the warrantless seizure of property or evidence or the warrantless arrest of a suspect who is committing or has committed a crime, or

(2) to take lawful action to prevent a crime from being committed.

(b) An officer or member who is conducting a criminal investigation shall be primarily concerned only with an investigation within the specialty field to which the officer or member has been assigned, except:

(1) in an emergency situation; or

(2) when instructed to participate in a special investigation by a supervisor.

(c) No officer or member may investigate a public official without proper authorization of the director, the assistant director, or another individual expressly acting in the stead of the director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Director
Texas Department of Public Safety
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SUBCHAPTER B. REPORTING PROPERTY CRIMES AGAINST THE ELDERLY

37 TAC §§5.11 - 5.16

The Texas Department of Public Safety proposes amendments to §§5.11 - 5.16, concerning Reporting Property Crimes Against the Elderly. Amendments to §5.11 reformat the section due to the deletion of several definitions. Additional amendments to §5.11 as well as §§5.12 - 5.16 are nonsubstantive and are necessary in order to make the sections read better. In addition, because of a reorganization within the department, the name of the unit responsible for maintaining the records has been changed.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be a centralized state database to identify those persons who prey on the elderly. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Mike Gougler, Assistant Commander, Criminal Intelligence Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0420, (512) 424-2200.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.051(c), which provides that the director of the department shall adopt rules, subject to commission approval, to prescribe the form, manner and regular intervals at which a law enforcement agency reports to the department an investigation of certain property crimes committed against the elderly.

Texas Government Code, §411.004(3) and §411.051(c) are affected by this proposal.

§5.11. Subchapter Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Analysis under this subchapter means a 28 Code of Federal Regulations (CFR)--compliant analysis by the department [~~Department of Public Safety~~] of information collected under this subchapter in conjunction with other corresponding information to determine:

(A) a trend or pattern, including modus operandi [~~Modus Operandi~~] (MO);

(B) a general outline of a confidence scheme, including victim selection;

(C) a general description of an organization engaging in confidence schemes; and

(D) specific identification of a potential victim, offender, or organization, including membership, address, alias, opening gambit, and vehicle information.

[~~(2) 28 CFR--means 28 Code of Federal Regulations, Part 23.1 et seq., as promulgated by the U.S. Department of Justice, Office of Justice Programs.~~]

[~~(3) Department or DPS--means the Texas Department of Public Safety.~~]

[~~(4) Director--means the director of the department.~~]

(2) [~~(5)~~] Elderly individual--means a person 65 years of age or older.

[~~(6) MO--means modus operandi.~~]

(3) [~~(7)~~] Property crime--means:

(A) an offense under Penal Code, Chapter 31 (Theft);

(B) an offense under Penal Code, Chapter 32 (Fraud);

(C) any other offense under the Penal Code involving an intent to steal or defraud, which may include robbery, burglary, or computer crime; or

(D) if the underlying offense is described by this paragraph:

(i) a preparatory offense under Penal Code, Chapter 15; or

(ii) an organized crime offense under Penal Code, Chapter 71.

§5.12. Applicability and Purpose.

(a) Applicability. This subchapter:

(1) does not apply to every crime against an elderly individual, including elderly abuse or injury to an elderly individual; and

(2) does apply to an offense that is:

(A) a property crime;

(B) investigated by a Texas law enforcement agency; and

(C) committed against an elderly individual.

(b) Determination of age. The victim's status as an elderly individual [~~65 or older~~] is determined according to the victim's age at the time of the offense.

(c) Background. The elderly are often victims targeted by individuals who prey on their vulnerability, especially through home repair and service swindles and other confidence schemes.

(1) These individuals are frequently part of a group that travels quickly from one location to another. The timely sharing of centrally collected and analyzed information with local authorities and certain other agencies will provide the highest level of law enforcement protection to these victims.

(2) Through the joint efforts of the department [~~DPS~~] and other law enforcement agencies, an apparently minor report of an unsolved offense may, when considered in light of other information and analysis, provide critical:

(A) strategic information to a follow-up investigator, including MO or a known associate; or

(B) tactical information to an officer in the field, including an alias or vehicle used.

(d) Purpose. This subchapter describes the system by which shared intelligence serves local law enforcement by providing useful

information and analysis concerning property crimes against the elderly. Using this system, the department [~~DPS~~] will:

(1) collect information about certain property crimes against the elderly;

(2) enter the information into a database;

(3) conduct an analysis under this subchapter;

(4) disseminate the information or analysis to an appropriate recipient in a timely manner; and

(5) develop evidence, or point to information from which evidence can be derived to show a particular criminal intent, including an intent to deprive, steal, or defraud, based on the unique characteristics of the confidence scheme, including its repetition, frequency, or transient nature.

(e) Primary investigation. The law enforcement agency with appropriate territorial jurisdiction remains the primary agency responsible for the investigation. Upon request, the department may:

(1) assist the agency; or

(2) conduct the primary investigation, in unusual circumstances involving a large multi-jurisdiction criminal organization.

§5.13. Requirements.

(a) Report. Government Code, §411.051, requires a state or local law enforcement agency that investigates a property crime committed against an elderly individual to report the investigation in the form and manner and at the regular intervals as prescribed by department [~~DPS~~] rules. This section comprises the department [~~DPS~~] rules concerning the form, manner, and interval for these reports.

(b) Form. The investigating agency complies with the report form requirements of law, if the agency, without regard to case clearance or whether any charge is filed, reports the investigation to the department [~~DPS~~] by forwarding:

(1) a copy of the initial investigative report; and

(2) a copy of any supplemental investigative report containing new, significant information material to the investigation, including any ultimate charge or disposition.

(c) Manner. The investigating agency may comply with the report manner requirements of law, if the agency reports the investigation by sending the copies to the department [~~DPS~~] by:

(1) regular mail to: Criminal Intelligence [~~Special Crimes~~] Service MSC 0420, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas, 78773-0420;

(2) fax to Criminal Intelligence [~~DPS Special Crimes~~] Service at: (512) 424-5434; or

(3) electronic mail to Criminal Intelligence [~~DPS Special Crimes~~] Service at: crimintel@txdps.state.tx.us [~~special-crimes@txdps.state.tx.us~~].

(d) Required interval. The investigating agency may comply with the report interval requirements of law if the agency sends the copies to the department [~~DPS~~] at least by the end of the next calendar week after the week in which the report was made.

(e) Recommended interval. In order to maximize the possibility of timely exchange of information and analysis, the department [~~DPS~~] encourages but does not require the agency to send an earlier electronic transmission of the report as soon as possible.

§5.14. Processing and Analysis.

(a) CLERIS. The department will process the information received under this subchapter by entering selected information from the reports into CLERIS, the "Criminal Law Enforcement Reporting and [~~Report~~] Information System" database.

(b) Analysis. The department will make reasonable efforts to analyze the information under this subchapter.

(c) General report. The department may provide a general statistical report of information or analysis under this subchapter.

§5.15. Intelligence.

(a) Department [~~DPS~~] responsibility. The department will maintain any intelligence component of the database described by this subchapter by extracting information from an investigative report or other intelligence source. The department assumes responsibility for 28 CFR compliance by the database.

(b) Local intelligence database. Nothing in Government Code, §411.051, or this subchapter prohibits a local law enforcement agency from establishing and maintaining a local intelligence database about an individual offender or group preying on the elderly.

(c) 28 CFR [~~and TXGANG~~]. The act of forwarding a copy of a report under this subchapter does not by itself expose the submitting agency to any 28 CFR [~~or TXGANG~~] requirement.

(d) Other intelligence reports. The department encourages submission and will accept any proper intelligence report about an individual offender or group preying on the elderly.

§5.16. Dissemination.

(a) Generally. The department may disseminate information received and the results of an analysis made under this subchapter:

(1) as permitted by law and this section; and

(2) to a local law enforcement agency, a political subdivision, or a state agency to the extent the information or analysis is reasonably necessary or useful to the agency or subdivision in carrying out the duties imposed by law on the agency or subdivision.

(b) Intelligence guidelines. While Government Code, §411.051, subsection (a) of this section, and other laws regulate a department [~~DPS~~] dissemination of factual information collected under this subchapter, each department [~~DPS~~] dissemination of an analysis must also comply with general intelligence guidelines and principles, including need to know and right to know and limitations on further disclosure.

(c) Query. The department may assist an agency or subdivision representative in formulating a proper or useful query. To make a query or seek assistance, the agency or subdivision may contact one of the following individuals assigned to Criminal Intelligence [~~DPS Special Crimes~~] Service, who is [~~are~~] normally available Monday through Friday from 8:00 a.m. to 5:00 p.m.:

(1) a headquarters analyst at: [~~1~~] (800) 252-5402 or (512) 424-2200; or

(2) an investigator or analyst at: a Criminal Intelligence [~~Special Crimes~~] Service field office.

(d) CLEO. The department may provide a law enforcement agency access to CLEO, the "Criminal Law Enforcement Online" website. Under this subchapter, the CLEO website may include current projects, general outlines of confidence schemes, general descriptions of confidence groups, MO patterns, frequently asked questions, and any other appropriate analysis under this subchapter. The department restricts CLEO access to members of a law enforcement agency.

(e) Public website. The department may provide public information on its general website about the program administered by the department [~~DPS~~] under this subchapter. The general website is: http://www.txdps.state.tx.us.

(f) Other dissemination. The department may disseminate selected information or analysis under this subchapter through a newsletter, bulletin, alert, public safety announcement, or other appropriate media.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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SUBCHAPTER C. THREATS AGAINST PEACE OFFICER

37 TAC §§5.31 - 5.34, 5.36, 5.38

The Texas Department of Public Safety proposes amendments to §§5.31 - 5.34, 5.36, and 5.38 concerning Threats Against Peace Officer. Amendments to §5.31 reformat the section due to the deletion of several definitions. Additional amendments to §5.31 as well as §§5.32 - 5.34, 5.36, and 5.38 are nonsubstantive and are necessary in order to make the sections read better.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be a centralized state database to identify those individuals who make threats against police officers. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Mike Gougler, Assistant Commander, Criminal Intelligence Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0420, (512) 424-2200.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.048 (e) and (i), which provide that the director of the department shall adopt rules, subject to commission approval, to prescribe the form and manner to be used by a criminal justice agency reporting to the department its determination of a serious threat against a peace officer, to prescribe how an agency may use information disseminated to it by the department, and to require compliance with general federal intelligence guidelines.

Texas Government Code, §411.004(3) and §411.048 (e) and (i) are affected by this proposal.

§5.31. Subchapter Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--means a criminal justice agency, including the department [~~Department of Public Safety (DPS)~~] when submitting a Threat Against Peace Officer (TAPO) report.

[~~(2) 28 CFR--means 28 Code of Federal Regulations, Part 23.1 et seq., as promulgated by the U.S. Department of Justice, Office of Justice Programs.~~]

(2) [~~(3)~~] Consensual citizen encounter--means the approach of a citizen by an officer under limited circumstances that are neither mandatory nor coercive and that do not rise to the level of a detention or arrest, where:

(A) the citizen is objectively aware of the freedom to leave; and

(B) the officer engages in casual conversation rather than [~~not~~] interrogation.

(3) [~~(4)~~] Criminal justice agency--has the meaning assigned by the Code of Criminal Procedure, Article 60.01.

[~~(5) Department or DPS--means the Texas Department of Public Safety.~~]

[~~(6) Director--means the director of the department.~~]

(4) [~~(7)~~] Officer--means a peace officer.

(5) [~~(8)~~] Peace officer--has the meaning assigned by [~~the~~] Penal Code, §1.07(a).

(6) [~~(9)~~] Serious threat against an officer--means an individual's expression of intent to inflict serious bodily injury or death on a peace officer.

(7) [~~(10)~~] TAPO--means the Threat Against Peace Officer index managed by the department.

(8) [~~(11)~~] TCIC--means the Texas Crime Information Center managed by the department.

(9) [~~(12)~~] Texas User Specifications--means the latest draft of the department [~~DPS~~] publication by that name and any cross-referenced material.

(10) [~~(13)~~] TLETS--means the Texas Law Enforcement Telecommunication System managed by the department.

§5.32. Applicability and Purpose.

(a) Non-applicability. This subchapter does not apply to every threat or offense targeting an officer or threats made by a group rather than an individual.

(b) Applicability. This subchapter applies to a threat determined by a Texas criminal justice agency:

(1) to be a serious threat against an officer, directed specifically against an individual officer or generally against some or all officers; and

(2) not to be from an anonymous source.

(c) Background and purpose. After an individual makes a serious threat against an officer, an appropriately disseminated alert about that threat may provide critical tactical information to an officer in the field.

(1) The timely sharing of centrally-collected threat information will help protect officers.

(2) TAPO [~~This central index system, called "TAPO,"~~] is a pointer system designed to provide rapid, statewide access to information about these threats.

(3) This subchapter governs the submission, query, dissemination, use, and retention of an electronic record in the TAPO [~~index~~] and the information supporting that record.

§5.33. General requirements.

(a) Department [~~DPS~~] responsibility. The department assumes responsibility for 28 CFR compliance with respect to security and file maintenance of the TAPO [~~index~~].

(b) Agency responsibility. Under Government Code, §411.048(i), an agency entering an electronic TAPO record must comply with the Texas User Specifications with respect to the information held by the agency to support the electronic record.

(1) Compliance with the Texas User Specifications and this subchapter is substantial compliance with 28 CFR.

(2) While the department [~~DPS~~] may assist the agency in its efforts to comply with 28 CFR, the submitting agency assumes responsibility for 28 CFR compliance for the supporting information.

(c) Criminal predicate. No agency may submit an electronic TAPO record without [~~a~~] proper criminal predicate directly related to the threat information supporting the electronic record.

(1) Criminal [~~A criminal~~] predicate is shown for an electronic record when articulable information exists to establish sufficient facts to give a peace officer, investigator, or other trained criminal justice employee reasonable suspicion to believe that a particular individual has made a serious threat against an officer.

(2) The individual need not have been arrested for the threat being investigated or any other crime, as [~~a~~] predicate for submitting information to TAPO.

(d) Erroneous record. If information is disseminated from a TAPO record and later determined to be materially erroneous or incorrect, the submitting agency must notify each previous recipient of the error or correction in the record. The department may assist the submitting agency in determining the identity of each recipient of the erroneous or incorrect record.

(e) Secondary database. No agency may use data received solely based on a TAPO query to populate another searchable database.

(f) Miscellaneous requirements. An agency shall comply with the following requirements of the Texas User Specifications:

(1) submission and collection;

(2) secure storage;

(3) inquiry and search capability;

(4) controlled dissemination; and

(5) purge and review process.

§5.34. Submission.

(a) Statutory report. Under Government Code[~~,~~] §411.048, a criminal justice agency must, upon determining that an individual has made a serious threat against an officer, immediately enter an electronic report of the determination into TAPO [~~the DPS threat index~~] in the form and manner provided by department [~~DPS~~] rules.

(1) This section comprises the department [~~DPS~~] rules concerning the form and manner for these reports.

(2) The form and manner may contain discretionary or mandatory provisions as described in the Texas User Specifications. Mandatory provisions describe the minimum information available to any agency making a proper TAPO query. Discretionary provisions describe additional intelligence information that may be stored by the department and available through [~~a~~] direct contact with Criminal Intelligence [~~DPS Special Crimes~~] personnel.

(b) Form. An agency must, without regard to ultimate charge or case clearance, enter an electronic record into TAPO following the form required by the Texas User Specifications.

(c) Manner. An agency must enter the electronic record following the manner required by the Texas User Specifications.

(d) Removal. The department will remove an electronic TAPO record if:

(1) the department [~~DPS~~] receives an appropriate court order;

(2) the department [~~DPS~~] determines that the TAPO record is misleading, inaccurate, or otherwise no longer relevant; or

(3) the submitting agency fails or refuses to:

(A) provide adequate documentation of any material information supporting the record; or

(B) validate the supporting information within the five year review period described in the Texas User Specifications.

(e) Group membership. The department will not accept submission of an electronic TAPO record for an individual if the record is based solely on the individual's membership in a group.

(f) Target notification. An agency should take reasonable steps to notify the intended target of the threat.

§5.36. Dissemination.

(a) By the department [~~DPS~~]. The department will disseminate a TAPO alert in compliance with this subchapter.

(b) By agency. The agency will immediately use a code to make the initial alert dissemination to an officer in the field by radio or other telecommunication system, unless there is a compelling reason to use plain English.

(1) The agency may provide other details of the alert, including the identity of the agency that submitted the electronic record to contact for specific, detailed information about the nature of the threat.

(2) The department encourages but does not require a uniform, statewide code to make the initial alert.

(c) Other dissemination by the department [~~DPS~~]. The department may disseminate selected information or analysis under this subchapter through a general statistical report, newsletter, bulletin, alert, or other appropriate media.

§5.38. Retention and Review.

(a) Retention. An agency must retain the information supporting each electronic report submitted by the agency following the retention requirements in the Texas User Specifications.

(b) Review by agency. An agency must systematically review the information supporting each electronic report submitted by

the agency to TAPO following the review requirements in the Texas User Specifications.

(c) Right of access by the subject. An [~~A~~] individual, who is the subject of the information in a TAPO record, may request a copy of the TAPO record from the department [~~DPS~~] in compliance with the Public Information Act. The department shall promptly respond to the request.

(d) Review by the subject. An [~~A~~] individual who is the subject of the information in a TAPO record, may request the director to review the information to determine whether the information complies with this subchapter [~~the rules adopted by the director~~]. The department shall conduct the review using the same procedure under the Code of Criminal Procedure, Chapter 61, for reviewing criminal information collected on a criminal street gang.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2007.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 424-2135

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SUBCHAPTER D. MULTICOUNTY DRUG TASK FORCES

37 TAC §§5.51 - 5.71

The Texas Department of Public Safety proposes amendments to §5.51 and new §§5.52 - 5.71, concerning Multicounty Drug Task Forces.

Amendment to §5.51 deletes paragraph (1) and paragraph (2) and reformats the remaining paragraphs. In addition further amendments are made to §5.51 in order to clean up language.

New §5.52 is necessary in order to adopt a Memorandum of Understanding with Criminal Justice Division of the Office of the Governor establishing the coordination of drug law enforcement efforts. In addition, new §5.53 describes communication with the director; new §5.54 provides the telephone number and address of the Narcotics Service; new §5.55 describes notification; new §5.56 describes the application; new §5.57 details who must submit an application; new §5.58 describes application rejection; new §5.59 describes application denial; new §5.60 described authorization cancellation; new §5.61 details requirements; new §5.62 describes withdrawal/restrictions or conditions; new §5.63 describes written notice; new §5.64 describes report to attorney general; new §5.65 describes request for meeting; new §5.66 describes expiration; new §5.67 describes termination; new §5.68 describes inspection; new §5.69 details what may be inspected; new §5.70 describes time limitations; and new §5.71 describes interference with inspection.

The amendment and new rules will replace previous rules which are simultaneously proposed for repeal in this issue of the *Texas Register.*

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure to the public the high level of effectiveness of statewide multicounty drug task forces. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Joe Ortiz, Assistant Commander, Narcotics Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0430, (512) 424-2150.

The amendment and new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.0097, which requires the department to establish policies and procedures for multicounty drug task forces, provides the authority to ensure compliance, and the authority to evaluate each multicounty drug force with respect to whether the task force complies with state and federal requirements including policies and procedures established by the department and demonstrates effective performance outcomes; and Texas Local Government Code, §362.004, which provides that the department confirm the strategic need for the task force and the composition of the task force and that the force comply with the policies and procedures established for the operation of the multicounty drug task force.

Texas Government Code, §411.004(3) and §411.0097; Texas Local Government Code, §362.004; and Texas Code of Criminal Procedure, Article 59.06(q) are affected by this proposal.

§5.51. Subchapter Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

[~~(1) Department or DPS--The Texas Department of Public Safety.~~]

[~~(2) Director--The Director of the Texas Department of Public Safety or his designee.~~]

(1) [~~(3)~~] Chief--The Chief of the Criminal Law Enforcement Division of the department [~~Texas Department of Public Safety~~] or his designee.

(2) [~~(4)~~] Commander--The Commander of the Narcotics Service of the Criminal Law Enforcement Division of the department [~~Texas Department of Public Safety~~] or his designee.

(3) [~~(5)~~] Multicounty drug task force ("task force")--has the meaning assigned that term by §362.001, Local Government Code.

(4) [~~(6)~~] Narcotics Service--The Narcotics Service of the Criminal Law Enforcement Division of the department [~~Texas Department of Public Safety~~].

(5) [~~(7)~~] Impact Area--The service area of the task force which must be comprised of contiguous counties that, by resolution or order of its governing body, have entered into an agreement with

a contiguous county to form a mutual aid drug law enforcement task force to cooperate in criminal investigations and law enforcement.

(6) [~~(8)~~] Project Director--The person responsible for the operation of the task force.

(7) [~~(9)~~] Task Force Commander--The person who supervises the day to day operations of the task force. The Task Force Commander will be responsible to the Project Director for the day to day operation of the task force.

§5.52. Memorandum of Understanding with Criminal Justice Division of the Office of the Governor.

The department and the Office of the Governor, Criminal Justice Division (CJD), have entered into a memorandum of understanding (MOU) pertaining to the coordination of drug law enforcement efforts. This MOU may be amended, as necessary, by subsequent written agreement adopted by rule. The current MOU is listed in the following:
Figure: 37 TAC §5.52

§5.53. Communication with Director.

If a person is required or allowed by this subchapter to make a notification, report, or other communication to the director, the person must make the communication in writing to the director through the Commander at the address indicated in §5.54 of this title (relating to Telephone Number and Address--Narcotics Service).

§5.54. Telephone Number and Address--Narcotics Service.

To inquire about information and administrative matters with, transmit to, or otherwise contact the Narcotics Service, in general:

(1) the telephone number is: (512) 424-2150;

(2) the fax number is: (512) 424-7166;

(3) the mailing address is: Narcotics Service MSC 0430, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0430;

(4) the physical address is: Narcotics Service MSC 0430, Texas Department of Public Safety, 6100 Guadalupe, Building E, Austin, Texas 78752; and

(5) the email address is: taskforceinfo@txdps.state.tx.us.

§5.55. Notification.

If this subchapter requires a person to notify or advise the director of new or changed information, the person must notify the director through the appropriate department unit or person indicated in this subchapter.

§5.56. Application.

(a) Required. A task force required to submit an application under this subchapter must comply with this subchapter.

(b) Form. An applicant must submit a complete application on department form NAR-122 to the director no later than the 1st of August in order to be approved for the annual term beginning September 1 of each year.
Figure: 37 TAC §5.56(b)

(c) Required Information. A person submitting an application under this section must:

(1) identify the drug threat to be addressed in the impact area;

(2) explain the strategic need for addressing the drug threat in the impact area;

(3) describe the composition of the task force, to include the names of the participating agencies and the names, training records, and experience of the individual officers to be assigned to the task force; and

(4) provide any other information necessary to process the application.

§5.57. Who Must Submit an Application.

Any drug task force composed of county or city law enforcement agencies located in two or more counties of this state.

(1) The applicant must be the Project Director who shall submit an application on behalf of the task force.

(2) The Project Director must be the elected District Attorney, the elected Sheriff, or the Chief of Police of a municipal police department located within the proposed impact area.

(3) The Project Director shall ensure that the task force adheres to all requirements contained in the application and in this subchapter.

§5.58. Rejection.

(a) The director may reject an application without further processing if an application, form, or document is incomplete, illegible, or missing.

(b) The director may request additional information necessary to process the application from the applicant and provide a deadline for the submission of the requested information. The director may reject an application without further processing if the requested information is not provided to the director by the deadline.

§5.59. Denial.

The director may deny an application if:

(1) the applicant has not sufficiently articulated and established a strategic need for the task force to specifically address the threat of the impact area;

(2) the composition of the task force has been inadequately disclosed for review of personnel as to their suitability for assignment to the task force or is unacceptable; or

(3) during the previous year, the task force has failed to comply with department rules or has failed to demonstrate effective performance outcomes.

§5.60. Cancellation.

The director may cancel an authorization if the director authorized the application in error.

§5.61. Requirements.

(a) A task force and any personnel assigned to the task force shall comply with the following:

(1) Department policies and procedures in the most current version of the department's task force manual;

(2) State and federal law and requirements;

(3) All provisions of this subchapter; and

(4) Best police practices.

(b) A task force shall demonstrate effective performance outcomes.

(c) A task force shall maintain an acceptable composition.

(d) A task force shall timely, accurately, and completely respond to any request for information, data, or reports by the director.

(e) If the Project Director or any task force personnel change, then the current Project Director shall notify the director within five calendar days after the change. A task force shall have a current Project

Director at all times. If the Project Director changes, the current Project Director shall complete and sign the certification section of the application form and submit the certification to the director within five calendar days after the change.

(f) At least twenty-five percent of personnel assigned to the task force shall be randomly tested at least quarterly for drugs by an independent scientific laboratory that meets federal Department of Health and Human Services guidelines for drug/metabolite testing. The Project Director shall provide the director with a copy of the task force's written drug testing policy if requested. The Project Director shall maintain documentation on file evidencing that the above drug testing was conducted. The Project Director shall notify the director of the identity of any employee with a positive drug test and shall take appropriate action as outlined in the applicant agency's policy on providing a drug-free workplace.

(g) The Project Director shall notify the director in writing, within five calendar days of the arrest, of the identity of any personnel that are arrested, the reason for the arrest, and any resulting action taken by the task force.

(h) The Project Director shall notify the director in writing of any lawsuit or pending litigation involving the task force or its personnel no later than five calendar days after receiving notice of any lawsuit or pending litigation.

§5.62. Withdrawal/Restrictions or Conditions.

(a) The director may withdraw an authorization to operate a task force or may place restrictions or conditions on task force operations if the task force fails to comply with any provision of this subchapter.

(b) Except as provided by this subsection, a task force whose authorization has been withdrawn may not apply for authorization to operate until one year after the date a withdrawal of authorization became final. Within that year, the director will not reinstate a task force who has had its authorization to operate withdrawn unless the task force submits a new application and establishes that the facts supporting the withdrawal of authorization have been negated. Even if a reinstatement is authorized to be effective any date other than September 1, the authorization will expire August 31.

§5.63. Written Notice.

The director shall provide written notice to a task force, through the Project Director, of any proposed action or action taken by the department affecting the task force's operations.

§5.64. Report to Attorney General.

(a) A task force may only retain proceeds from forfeitures for the period of time that the task force was authorized by the director.

(b) The director shall report the expiration, withdrawal, denial, or cancellation of a task force's authorization to the attorney general.

(c) The director may report a task force who has had restrictions or conditions placed on task force operations to the attorney general.

§5.65. Request for Meeting.

(a) A Project Director may submit a request for a meeting with the Chief upon denial, cancellation, or withdrawal of authorization.

(b) The request for a meeting, articulating points of contention, must be in writing.

(c) The request shall be addressed to the Chief and must be received by the Chief no later than 15 calendar days after the director mailed his written notice of denial, cancellation, or withdrawal of authorization to the task force.

(d) The request for a meeting may be faxed or mailed to the Chief.

(1) The fax number is: (512) 424-5794.

(2) The mailing address is: Criminal Law Enforcement MSC 0400, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0400.

(3) The physical address is: Criminal Law Enforcement MSC 0400, Texas Department of Public Safety, 6100 Guadalupe, Building E, Room 100, Austin, Texas 78752.

(e) An untimely request for a meeting shall be rejected without further proceedings.

(f) Upon receipt of a timely request for a meeting, the Chief shall schedule a meeting.

(g) The applicant may submit a written response to the Chief, articulating points of contention and rebutting findings by the department, on or before the scheduled meeting date in lieu of attending the meeting in person.

(h) The Chief shall decide whether to uphold or modify the denial, cancellation, or withdrawal of authorization.

(i) The Chief's decision shall be final and not subject to appeal.

(j) If there is no request for a meeting or an untimely request for a meeting, then the denial, cancellation, or withdrawal is final on the 16th calendar day after the director mailed his written notice of denial, cancellation, or withdrawal of authorization to the task force and is not subject to further appeal.

§5.66. Annual Expiration.

A task force authorization expires on the 31st of August of each year. After expiration, the prior authorization provides the task force with no authority to continue to operate as a multicounty drug task force.

§5.67. Termination.

(a) When. An authorization terminates:

(1) after expiration under this subchapter;

(2) when a task force voluntary discontinues operations;

(3) when a withdrawal, cancellation, or denial of authorization is final; or

(4) at the end of the period of authorization.

(b) New application required. After termination, an applicant must apply for a new authorization to operate a task force.

(c) Effect of termination. After termination, the prior authorization provides the task force with no authority to operate as a multicounty drug task force.

(d) Discontinued activity. On the day a task force discontinues operations, the Project Director must notify the director in writing by close of business. The director shall immediately terminate the task force's authorization to operate.

§5.68. Inspection.

The director or a member of the department may inspect any aspect of the task force operation to ensure compliance with applicable law and regulation, state and federal requirements, and policies and procedures established by the department.

§5.69. What May Be Inspected.

The director or a member of the department may examine, audit, inspect and copy:

(1) a record, report, or other document created or maintained pursuant to the operation of the task force; and

(2) administrative information relating to the collection of statistical information.

§5.70. Time Limitations.

The director or a member of the department may enter the offices maintained by the task force at a reasonable time, including:

(1) normal business hours; or

(2) at another time when the task force offices are occupied or open.

§5.71. Interference With Inspection.

No individual in charge of a premise, item, or record covered by this subchapter may refuse or interfere with any of the following activities related to the inspection:

(1) entry to the premises;

(2) examination, audit, or inspection or records; or

(3) copying a record or related document.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2007.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 424-2135

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37 TAC §§5.52 - 5.70

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §§5.52 - 5.70, concerning Multicounty Drug Task Forces. Repeal of the sections is necessary due to the addition of a new §5.52. The repeal is being filed simultaneously with a proposal which will renumber repealed §§5.52 - 5.70 as new §§5.53 - 5.71.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to ensure to the public the high level of effectiveness of statewide multicounty drug task forces. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the repeal may be submitted to Joe Ortiz, Assistant Commander, Narcotics Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0430, (512) 424-2150.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.0097, which requires the department to establish policies and procedures for multicounty drug task forces, provides the authority to ensure compliance, and the authority to evaluate each multicounty drug force with respect to whether the task force complies with state and federal requirements including policies and procedures established by the department and demonstrates effective performance outcomes; and Texas Local Government Code, §362.004, which provides that the department confirm the strategic need for the task force and the composition of the task force and that the force comply with the policies and procedures established for the operation of the multicounty drug task force.

Texas Government Code, §411.004(3) and §411.0097; Texas Local Government Code, §362.004; and Texas Code of Criminal Procedure, Article 59.06(q) are affected by this proposal.

§5.52. Communication with Director.
§5.53. Telephone Number and Address--Narcotics Service.
§5.54. Notification.
§5.55. Application.
§5.56. Who Must Submit an Application.
§5.57. Rejection.
§5.58. Denial.
§5.59. Cancellation.
§5.60. Requirements.
§5.61. Withdrawal/Restrictions or Conditions.
§5.62. Written Notice.
§5.63. Report to Attorney General.
§5.64. Request for Meeting.
§5.65. Annual Expiration.
§5.66. Termination.
§5.67. Inspection.
§5.68. What May Be Inspected.
§5.69. Time Limitations.
§5.70. Interference With Inspection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
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For further information, please call: (512) 424-2135

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CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §15.162

The Texas Department of Public Safety (department) proposes amendments to §15.162, concerning Installment Agreements. Amendments to the section are necessary because effective September 1, 2007, Texas Transportation Code, Chapter 708, §708.153, amends the Driver Responsibility law to allow the department the ability to reinstate installment payments for a person who has previously defaulted on the installment plan.

Currently, customers who enter default are required to pay the balance in full. Due to the fees associated with surcharge assessments, many customers are not capable of paying the balance in full. Therefore, the customer does not attempt to pay the remaining balance and, in many instances, may continue to drive while privileges have been suspended. The department further proposes to allow a customer the ability to change the due date for a surcharge assessment to a convenient time of the month for the customer based on ability to pay. Current due dates are set by the automatic generation of the notice. The ability to reinstate the installment payments without additional penalties and change due dates would allow customers to remain in compliance with the law, which is the objective of the Driver Responsibility Program.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the rule proposal is in effect, there will be no fiscal implications for local government or local economies. While it is anticipated that reinstatement of defaulted installment plans would result in revenue gain for current uncollected surcharge revenue billed, the department does not have statistical data related to individuals with a history of prior noncompliance to determine who would comply with the provisions of the revised rule. Therefore, revenue gain estimates to state government cannot be assessed.

Mr. Ybarra also has determined that, for each year of the first five-year period the rule proposal is in effect, the public benefit anticipated as a result of enforcing the rule will be to inform the public of the ability to reinstate installment payments without additional penalties and to change due dates which would allow them to remain in compliance with the law. The anticipated cost to individuals will be the cost of their installment agreement. There is no anticipated cost to small businesses or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Rebekah Lammey, Program Administrator, Texas Department of Public Safety, Driver License Division, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-2953.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §708.002.

Texas Government Code, §411.004(3) and Texas Transportation Code, §708.002 are affected by this proposal.

§15.162. Installment Agreements.

(a) The department, through the vendor, will accept installment payments for surcharges required under the Driver Responsibility Program.

(b) There is an additional processing fee required per each payment submitted in accordance with an installment agreement. The fee is set by the department and is provided on all original notifications.

(c) To enter into an installment agreement, the individual must submit the minimum amount due. The vendor's acceptance of the minimum amount due constitutes an installment agreement. The individual is not required to provide written declaration of the installment agreement.

(d) To prevent suspension, the minimum amount due must be received within 30 days of the original Surcharge Notification.

(e) The driver license and or privileges of [~~If a suspension action has occurred,~~] an individual who submits less than the minimum payment needed to establish [~~has not submitted any partial payments can enter into~~] an installment agreement will be suspended [~~to lift the suspension~~].

(f) If a suspension action has occurred, an [~~The driver license and/or driving privileges of an individual who submits less than the minimum payment needed to establish an installment agreement will be suspended. This~~] individual who has not submitted a minimum payment can [~~will not be eligible to~~] enter into an installment agreement to lift the suspension. [~~for that specific surcharge requirement. The suspension will remain in effect until the surcharge and related costs are paid in full.~~]

(g) Subsequent payments are due each month on the same date as the date of the Surcharge Notification for that particular surcharge. Upon entering or reinstating an installment agreement, the department may permit an individual to make a one-time change to the day of the month in which an installment payment is due.

(1) If the installment payment is due on the 29th, 30th or 31st, payments are due on next business day in months that do not have those dates.

(2) Payment due dates return to the same date as the Notification for following months that have the corresponding date.

(h) If an individual fails to provide a timely payment and defaults on the installment agreement, the license and/or driving privileges will be suspended. The department may permit the individual to make a one-time election to reinstate the defaulted [~~individual will not be eligible to enter into another~~] installment agreement [~~for that specific surcharge requirement~~]. The suspension will remain in effect until the surcharge and related costs are paid in full or the installment agreement is reinstated.

(i) If suspended due to default on the installment agreement twice, an individual may continue to make partial payments; however,

the license will remain suspended until the specific surcharge has been paid in full.

(j) To submit an installment payment, the individual must include the full name, Texas driver license/identification card or unlicensed number and the surcharge reference number with all payments.

(1) If an individual has multiple surcharge notifications and does not provide the reference number, the payment will be applied to the oldest outstanding surcharge requirement.

(2) If the individual submits a payment and provides a reference number, the payment will be applied as requested even if this results in a default or suspension on another surcharge owed by the same individual.

(k) Minimum payments are determined by dividing the total amount due by the maximum payments allowed and adding the partial payment fee. The maximum number of payments is determined by the amount of the surcharge required.

(1) For surcharge requirements of $100 - $259 an individual may make a maximum of four (4) payments.

(2) For surcharge requirements of $260 - $499 an individual may make a maximum of eight (8) payments.

(3) For surcharge requirements of $500 - $999 an individual may make a maximum of ten (10) payments.

(4) For surcharge requirements of $1000 - $1499 an individual may make a maximum of twelve (12) payments.

(5) For surcharge requirements of $1500 - $1999 an individual may make a maximum of twenty-four (24) payments.

(6) For surcharge requirements of $2000 and greater, an individual may make a maximum of thirty-six (36) payments.

(l) An individual may pay the balance in fewer payments, but a payment of less than the minimum required will result in the suspension of the license and/or driving privileges.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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37 TAC §15.163

The Texas Department of Public Safety proposes new §15.163, concerning Amnesty, Incentive and Indigency Programs.

Effective September 1, 2007, Texas Transportation Code, Chapter 708, §708.157 amended the Driver Responsibility law to allow the department the ability to establish amnesty, incentive and indigency programs. Currently, customers who enter the surcharge program are required to pay the full assessment. The new program would allow customers who establish compliance with the law to receive a reduced assessment.

The department proposes to allow a reduction for surcharges related to Failure to Maintain Liability Insurance or Driving Without a Valid License if the customer establishes compliance with the law by maintaining liability insurance or obtaining a valid driver license. The customer would remain in compliance with the law for the underlying offense and the surcharge program at a reduced amount, which is the objective of the Driver Responsibility Program.

The department proposes to allow a reduction for surcharges related to Points, Driving While Intoxicated and Driving While License Invalid if the customer establishes compliance with the surcharge program and the driver history does not reflect additional convictions subject to the Driver Responsibility Program. The customer would receive an incentive for remaining in compliance with the law and the surcharge program at a reduced amount, which is the objective of the Driver Responsibility Program.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the section is in effect it is anticipated that the establishment of amnesty, incentive and indigency programs would result in revenue gain to the state for current uncollected surcharge revenue billed. However, the department does not have statistical data related to individuals with a history of prior noncompliance to determine who would comply with the provisions of the proposed section; therefore, revenue gain estimates cannot be assessed. There are no anticipated fiscal implications for local government or local economies.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing the section will be to allow the public the opportunity to show compliance with the law and thereby reduce the amount of the surcharge owed.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Rebekah Hibbs, Project Administrator, Driver Responsibility Program, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-2953.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commis-

sion to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §708.157.

Texas Government Code, §411.004(3) and Texas Transportation Code, §708.157 are affected by this proposal.

§15.163. Amnesty, Incentive and Indigency Programs.

(a) The department may provide for amnesty, incentive and indigency programs under the Driver Responsibility Program.

(b) The Amnesty Program will consist of an agreement made between the department and an individual to reduce a surcharge assessment based upon compliance with the law. The Amnesty Program will apply to surcharges for Failure to Maintain Insurance and Driving Without a Valid License.

(1) For a No Insurance surcharge, the assessment may be reduced to 75% of the initial assessment if the individual provides proof of insurance satisfactory to the department.

(A) The individual will be required to maintain liability insurance for the term of the surcharge assessment to qualify for the reduction each year.

(B) The individual will be required to present proof of insurance at the time of payment. If the individual enters an installment agreement, proof of insurance must be presented with each payment made to the department.

(C) If the individual fails to comply with subparagraphs (A) and (B) of this paragraph or defaults on the payment plan during the reduced assessment period, the amnesty provision will be voided and the full assessment will be applied.

(2) For a Driving Without a Valid License surcharge, the assessment may be reduced to 75% of the initial assessment if the individual obtains the appropriate driver license for the type of vehicle for which the offense was issued.

(A) The individual will be required to maintain a valid driver license for the term of the surcharge assessment to qualify for the reduction each year.

(B) If the individual fails to maintain a valid driver license as required or defaults on the payment plan during the reduced assessment period, the amnesty provision will be voided and the full assessment amount will be applied.

(c) The Incentive Program will consist of an agreement made between the department and an individual to reduce surcharge assessments based upon compliance with the surcharge program. The Incentive Program will apply to surcharges for Points, Intoxication and Driving While License Invalid.

(1) At the annual review for a second surcharge assessment, if the driver record reflects no additional convictions subject to the Driver Responsibility Program, the second surcharge assessment will be reduced to 90% of the full assessment.

(2) At the annual review for a third surcharge assessment, if the driver record reflects no additional convictions subject to the Driver Responsibility Program, the third surcharge assessment will be reduced to 80% of the full assessment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 17. ADMINISTRATIVE LICENSE REVOCATION

SUBCHAPTER A. ADMINISTRATIVE LICENSE REVOCATION

37 TAC §§17.2 - 17.4, 17.6, 17.9, 17.11, 17.12, 17.16

The Texas Department of Public Safety proposes amendments to §§17.2 - 17.4, 17.6, 17.9, 17.11, 17.12, and 17.16, concerning Administrative License Revocation.

Amendment to §17.2 adds new paragraph (41) relating to the definition of watercraft.

Amendment to §17.3 is necessary as the department is only required pursuant to Transportation Code, §724.034, §524.013, and §522.105 to send notice by first class mail to the person's address of record or to the address given in the police report, if different.

Amendment to §17.4 is necessary because Transportation Code, §724.042, §524.035, and §522.105 lists the issues that the department must prove to obtain an affirmative finding in a contested hearing. It does not limit the department to the type of evidence that must be submitted at the hearing to prove the issues. Nevertheless, several administrative law judges have, at the request of licensees' attorneys, interpreted Title 37 TAC §17.5 to mean that the department's own rules require a breath test record must be in evidence for the department to sustain an ALR suspension. This precludes the technical supervisor from giving live testimony as to the contents of a valid breath test record when a discovery dispute has kept the breath test record document out of evidence. Title 37 TAC §17.5 pertains to automatic suspensions where Driver Improvement and Compliance Bureau must have the breath test record, but not an affidavit from the technical supervisor, in its possession to process a suspension.

Amendments to §17.6 are necessary because Transportation Code, §524.013 allows for the rescission of the notice of suspension. The rule is silent as to the method of delivering the rescission to the customer. Delivering the rescission by first class mail instead of certified mail is much more cost effective. Additionally, delivery by first class mail is allowed by statute as the only delivery method when the department issues a notice of suspension. On the second revision to the subsection, the department cannot comply with the mandate that upon a rescission the driver license shall be returned. Due to the heavy volume of confiscated driver licenses, the department had to cease to maintain the driver licenses on the DPS premises. Driver licenses are shredded and customers are told to obtain a duplicate at a driver license office. The department normally will have already shredded the driver license by the time a rescission is issued.

Amendment to §17.9 is clean-up language and is necessary because ALR hearings are conducted under both Chapter 524 and Chapter 724.

Amendments to §17.11 are necessary in order to state the Transportation Code section that governs remands. Language was added to follow common practice in the legal profession that allows service by hand-delivery or courier receipted delivery. Transportation Code, § 524.041 governs the service of ALR appeals.

Amendment to §17.12 is necessary because there are no statutes addressing the delivery method of a final order to a customer who receives an automatic suspension. The amendment enables the department to deliver the order in the most cost effective manner.

Amendments to §17.16 are necessary because maintenance and repair records fall under "any tangible/documentary evidence" but the department has received arguments from licensees' attorneys that the rule would state that if that was what was meant and they can send it to any DPS address. The amendment makes the rule more specific. Title 37 TAC §17.16(c) is amended to end confusion as to when, where, and how breath test operators and/or technical supervisors can be requested by limiting service to one fax number and one mailing address and not allowing the department to be served these witness requests at the fax number and post office box designated for requesting a hearing. The department loses hearings if we do not know to have these witnesses present for the hearings and requests for the witnesses will be easier to track if they all go to the same place. The statutes do not address the proper place to serve the department, only that the department must receive a request for these witnesses (Transportation Code, §524.039).

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Lanette Rusmisel, Director of Hearings, Administrative License Revocation, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5235.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §524.002 and §724.003, which provide that the department may adopt rules to administer those chapters.

Texas Government Code, §411.004(3) and Texas Transportation Code, §524.0022 and §724.003 are affected by this proposal.

§17.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (10) (No change.)

(11) Breath alcohol test--Has the meaning assigned in §19.1 [~~§19.7~~] of this title (relating to Definitions) [~~(relating to Explanation of Terms and Actions)~~].

(12) - (25) (No change.)

(26) Instrument or breath test instrument--Has the meaning assigned in §19.1 [~~§19.7~~] of this title (relating to Definitions) [~~(relating to Explanation of Terms and Actions)~~].

(27) - (37) (No change.)

(38) Technical supervisor or certified breath test technical supervisor--Refers to the person who is responsible for maintaining and directing the operation of the breath test instrument used to analyze the specimen of the person's breath, and who has been certified by the department under the provisions of §19.6 [~~§19.5~~] of this title (relating to Technical Supervisor certification).

(39) - (40) (No change.)

(41) Watercraft--means powered with an engine having a manufacturer's rating of 50 horsepower or above.

§17.3. Notice of Suspension or Disqualification.

(a) - (b) (No change.)

(c) Notice given by the department. In the event that the arresting officer did not serve notice of suspension or disqualification on the person following an ALR contact, the department shall send, by first class [~~certified~~] mail, notice of suspension or disqualification to the person's address of record, and to the person's current address given in the ALR report if different. If the department cannot verify that proper notice of suspension was served on the person by a peace officer following an ALR contact, the department may serve notice of suspension or disqualification. Notice is presumed received on the fifth day after the date it is mailed.

(d) (No change.)

§17.4. ALR Reports.

Following an ALR contact, the peace officer shall submit an ALR report to the department on a form approved by the department.

(1) - (3) (No change.)

(4) Nothing in this section is intended to imply that any specific documents are necessary to be in evidence in a contested hearing for the department to meet its burden. This section applies only to automatic suspensions.

§17.6. Rescission.

(a) (No change.)

(b) If for any reason the department declines to prosecute an ALR suspension or disqualification, or rescinds said action after imposition, the department shall send notice of rescission to the person at his/her address of record, and current address, if different by first class mail. Under such circumstances, the department may [~~shall~~] return the person's driver license if it was previously surrendered or confiscated.

(c) (No change.)

§17.9. Hearings.

ALR hearings shall be held in accordance with Texas Transportation Code, Chapters [~~Chapter~~] 524 and 724, and in accordance with 1 Texas Administrative Code, Chapter 159.

§17.11. Appeals.

(a) - (b) (No change.)

(c) A remand pursuant to §524.043(e) does not stay the suspension or disqualification.

(d) To perfect service on the department of a judicial appeal of a final order in a contested ALR case pursuant to 1 TAC §159.37 (relating to Appeal of Judge's Decision) and this section, a defendant must send by certified mail a file-stamped copy of the defendant's appeal petition, certified by the clerk of the court in which the petition is filed, to the department at its headquarters in Austin. The certified copy must be addressed and mailed to Director of Hearings, ALR Program, Box 15327, Austin, Texas 78761-5327 or by hand delivery or courier receipted delivery through a commercial overnight service during regular business hours to the Director of Hearings, ALR Program, Driver License Division, Department of Public Safety, Main Building, 5805 North Lamar Boulevard, Austin, Texas 78752-0300. A suspension will not be stayed until service is perfected according to this subsection.

(e) (No change.)

§17.12. Final Order of Suspension or Disqualification.

If an administrative hearing is not requested, then before the effective date of suspension or disqualification, the department shall mail a final order of suspension or disqualification to the person's address of record [~~and to the person's current address, if different~~]. The order shall state the length of suspension or disqualification and the procedure for reinstatement. A final order of suspension or disqualification is not considered notice of suspension or disqualification for purposes of requesting an administrative hearing under this section. A final order of suspension or disqualification is presumed received on the 5th day after the day it is mailed.

§17.16. Service on the Department of Certain Items Required to be Served on, Mailed to, or Filed With the Department.

(a) Where authorized, required, or permitted by statute or rule, a Request for Production, Maintenance and Repair records, and/or any tangible/documentary evidence required to be served by the defendant on the department must be served on the department by one of the following methods:

(1) - (4) (No change.)

(b) This section does not authorize or confer any discovery rights on a person or entity.

(c) Any request for the appearance of the "breath test operator and/or breath test technical supervisor" at the ALR hearing, pursuant to Texas Transportation Code, §524.039(a), [~~when made subsequent to the defendant's initial request for hearing,~~] must be made by one of the methods set forth in paragraph (a) of this section and must be received by the department at least five days prior to the scheduled hearing date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER I. VEHICLE INSPECTION ADVISORY COMMITTEE

37 TAC §§23.201 - 23.206, 23.208, 23.210, 23.213

The Texas Department of Public Safety proposes amendments to Chapter 23, Subchapter I, §§23.201 - 23.206, 23.208, 23.210, and 23.213, concerning the Vehicle Emissions Inspection and Maintenance Advisory Committee.

Amendments to Subchapter I are necessary in order to reflect changes to Texas Transportation Code, §548.006 made by House Bill 2565 (80th Texas Legislature, Regular Session). Transportation Code, §548.006 established an Advisory Committee to advise the department on administrative rules, make recommendations, and perform other advisory functions as requested, relating to the operation of the vehicle emissions testing program under Transportation Code, Chapter 548, Subchapter F. House Bill 2565 broadens the scope of the committee to advise the department and the Texas Commission on Environmental Quality on administrative rules, make recommendations, and perform other advisory functions as requested relating to the operation of the inspection program contained in Transportation Code, Chapter 548 and Health and Safety Code, Chapter 382. In addition, House Bill 2565 makes changes to the number of members and method of appointment, and exempts the committee from provisions of Texas Government Code, Chapter 2110. The title of the subchapter is also changed as it is proposed that the committee be known as the Vehicle Inspection Advisory Committee.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the amended sections are in effect, there will be some fiscal implications for state government as Transportation Code, §548.006 provides that a member of the Advisory Committee is entitled to reimbursement of the member's travel expenses as provided in the General Appropriations Act for state employees. There will be additional fiscal implications involved with use of state government staff, resources, and facilities in support of the committee's functions. There are no anticipated fiscal implications for local government or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amended sections are in effect, the public benefit anticipated as a result of enforcing the sections will be a continuing forum for members to advise the department and the Texas Commission on Environmental Quality on rules and operations of the inspection program. There is some adverse economic impact anticipated for individuals, small businesses, or micro-businesses. Texas Transportation Code, §548.006 provides that a member of the Advisory Committee is not entitled to compensation, so it is likely that the costs related to the committee's work and/or attendance, other than travel, will be borne by the individuals, small businesses, or micro-businesses that employ the committee members.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be submitted to Luis Gonzalez, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2119.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which gives the department the authority to adopt rules to administer and enforce this chapter.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.201. Purpose.

This subchapter governs procedures applicable to the Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Advisory Committee created to advise the conservation commission and the department on the rules relating to the operation of the Motor Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Program established under Chapter 548[~~, Subchapter F~~] of the Transportation Code.

§23.202. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Advisory committee--Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Advisory Committee created by or under, Subchapter A, Chapter 548, Transportation Code, §548.006, that has as its primary function the provision of advice to the department.

(2) Department--Department of Public Safety.

(3) Director--Director of the Department of Public Safety.

(4) Conservation Commission--Texas Commission on Environmental Quality.

§23.203. Creation and Duration of Terms for the Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Advisory Committee.

(a) The Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Advisory Committee is created as provided in Texas Transportation Code, §548.006 and shall consist of nine members. Five members of the committee constitute a quorum sufficient to conduct the meetings and business of the committee.

(b) The [~~Not later than January 1, 2002, the~~] members of the Public Safety Commission shall appoint to the advisory committee seven members, as follows:

(1) two representatives [~~a representative~~] of inspection station owners and operators, with one from a county where vehicle emissions testing is conducted and one from a county where safety only inspections are conducted, to serve a one-year term;

(2) two representatives of inspection station owners and operators, with one from a county where vehicle emissions testing is conducted and one from a county where safety only inspections are conducted, to serve a two-year term;

(3) [~~(2)~~] a representative of manufacturers of motor vehicle emissions inspection devices to serve a two-year term; [~~and~~]

(4) a representative of independent vehicle equipment repair technicians to serve a one-year term; and

(5) [~~(3)~~] a representative of the public interest to serve a three-year term.

(6) [~~(4)~~] After the initial term all appointments will be for a period of three years.

(c) The presiding officer of the Public Safety Commission and the presiding officer of the [~~Not later than January 1, 2002, the members of the Texas Natural Resource~~] Conservation Commission shall each appoint one member [~~members~~] to the advisory committee who will alternately serve as the presiding officer of the advisory committee for a one-year period, as follows:

(1) the presiding officer of the Public Safety Commission [~~commission~~] shall appoint a member to a three-year term, who will serve as the first presiding officer of the committee for one year and then annually alternate as the presiding officer with the member appointed by the Conservation Commission; and

(2) [~~one member other than~~] the presiding officer of the Conservation Commission shall appoint a member to a two-year [~~one-year~~] term, who will serve as the presiding officer in the second year of appointment. [~~; and~~]

[~~(3) one member other than the presiding officer shall appoint a member to a two-year term.~~]

(3) [~~(4)~~] After the initial term both [~~all~~] appointments will be for a period of three years.

(d) [~~In accordance with~~] Texas Government Code, Chapter 2110, does not apply to this [~~the advisory committee shall be abolished on the fourth anniversary of the date of its creation (January 1, 2002) unless the Public Safety Commission affirmatively votes to continue the~~] advisory committee.

§23.204. Purpose and Duties of Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Advisory Committee.

The purpose of the advisory committee shall be to give the department's Vehicle Inspection Service employees the benefit of the members' collective business, environmental, and technical expertise and experience with respect to the department's rules relating to the operation of the vehicle inspection [~~emissions testing~~] program and [~~at the department's request~~] make recommendations relating to the content of rules involving the operation of the vehicle inspection [~~emissions testing~~] program. Recommendations and advice of the committee are not binding on the department. The committee will have no supervision or control over public business or policy. The advisory committee's sole duty is to advise the department on the state's vehicle [~~emission~~] inspection [~~and maintenance~~] program. This advice shall consist of review and comment on rules considered for adoption under Chapter 548 [~~Subchapter F~~] of the Transportation Code and Chapter 382 of the Health and Safety Code. The Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Advisory Committee has no executive or administrative powers or duties with respect to the operation of the department, and all such powers and duties rest solely with the department. Any other specific purposes and tasks of the advisory committee shall be identified by the Director.

§23.205. Composition of Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Advisory Committee.

The composition of the Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Advisory Committee shall consist of nine [~~six~~] members. The Public Safety Commission shall appoint seven [~~three~~] members of the committee as follows: two persons to represent inspection station owners and operators selected from counties conducting vehicle emissions testing under Chapter 548, Subchapter F of Transportation Code; two persons to represent inspection station owners and operators from counties conducting safety only inspections; one person to represent manufacturers of motor vehicle emissions inspection devices; one person to represent independent vehicle equipment repair technicians; and one person to represent the public interest. The presiding officers of the Public Safety Commission and the Conservation Commission shall each appoint one member of the advisory committee to alternate serving as the presiding officer of the committee for a term of one year [~~one person to represent inspection station owners and operators; one person to represent manufacturers of motor vehicle emissions inspection devices; and one person to represent the public interest.~~

~~Each member of the Natural Resource Conservation Commission shall appoint one member of the committee~~].

§23.206. Membership Terms.

Vehicle [~~Emissions~~] Inspection [~~and Maintenance~~] Advisory Committee members shall serve staggered three-year terms. A vacancy on the advisory committee is filled in the same manner as other appointments to the committee.

§23.208. Attendance.

A record of attendance at each meeting of the advisory committee shall be made. Except as otherwise provided by law, if a member of the [~~an~~] advisory committee misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period, that member automatically vacates his or her position on the advisory committee.

§23.210. Presiding Officer.

The members [~~member~~] appointed by the presiding officers [~~officer~~] of the Public Safety Commission and the [~~Natural Resource~~] Conservation Commission shall alternately serve as the presiding officer of the committee. The presiding officer will prepare a meeting agenda for each meeting of the advisory committee. A copy of the agenda shall be provided to the department fifteen (15) working days before any scheduled meeting so that the department can arrange for the necessary staff to be in attendance and provide notification to the committee members and the public. The presiding officer shall report the committee's advice and attendance to the Director. The committee may elect an assistant presiding officer and a secretary from among its members and may adopt rules for the conduct of its own activities.

§23.213. Meetings.

The advisory committee shall meet at least twice annually [~~on a quarterly basis~~] or at the call of the presiding officer. All advisory committee meetings shall be open to the public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION
SUBCHAPTER B. CORRECTIONAL CAPACITY

37 TAC §152.37

The Texas Board of Criminal Justice (TBCJ) proposes new 37 TAC §152.37, Addition to Capacity.

The purpose of the rule is to establish the maximum capacity of two (2) units that have been transferred from the Texas Youth Commission to the Texas Department of Criminal Justice (TDCJ).

Charles Marsh, Chief Financial Officer for TDCJ, has determined that the start-up costs for these facilities total $3,000,000, and for the first five (5) years this rule will be in effect, the operational costs will total $60,400,000.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to increase correctional capacity.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The new rule is proposed under Texas Government Code, §492.001 and §492.013.

Cross Reference to Statutes: Texas Government Code, Chapter 499, Subchapter E.

§152.37. Addition to Capacity.

The maximum capacity of each unit located in Marlin, Texas and San Saba, Texas, and transferred from the Texas Youth Commission is established at 606.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 29, 2007.

TRD-200705951
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-0422

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.31

The Texas Board of Criminal Justice proposes amendments to §163.31, Sanctions, Programs, and Services. The proposed amendments are necessary to add clarity.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic

impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to ensure that progressive sanctions and programs are available to offenders on community supervision.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §509.003 and §509.016.

Cross Reference to Statutes: Texas Government Code, §492.013.

§163.31. Sanctions, Programs, and Services.

(a) Core Services. All Community Supervision and Corrections Departments (CSCDs) [~~CSCDs~~] shall provide the following core services:

(1) Court Services:

(A) conduct pre/post-sentence investigations as ordered by the court and in accordance with law;

(B) report violations to the court;

(C) provide testimony as custodian of the record;

(D) conduct assessments and complete reports mandated by law;

(E) make recommendations to the court regarding conditions of supervision; and

(F) maintain case files.

(2) Basic Supervision:

(A) enforce conditions of community supervision;

(B) perform case intake;

(C) conduct assessments, reassessments, and supervision planning, and implement strategies to address identified offender risks [~~risk~~] and needs with the resources [~~made~~] available to jurisdictions;

(D) provide contacts to offenders on direct community supervision per Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) [~~TDCJ-CJAD~~] standards;

(E) maintain case files;

(F) develop and monitor community service restitution programs;

(G) as ordered by the court, assess and, when needed, provide access to education, substance abuse and mental impairment services;

(H) monitor employment and provide job and/or vocational services to employable offenders; and

(I) provide access to assessment and [~~access to~~] treatment services for sex offenders and violent offenders and maintain appropriate levels of supervision for [~~both of~~] these [~~types of~~] offenders.

(3) Administrative Services. Provide adequate management and support service to the CSCD operation, commensurate with available resources, to include but not [~~be~~] limited to:

(A) administrative support staff;

(B) data processing support;

(C) data control and evaluation support;

(D) fiscal services support; and

(E) training coordinators.

(b) Continuum of Sanctions. All CSCD directors shall ensure the development and implementation of a continuum of sanctions that [~~to~~] address the risks [~~risk~~] and needs of offenders as identified in the jurisdiction's community justice plan, subject to available resources and local policy.

(c) [~~Local/~~]Regional Planning. Regional programs and services shall be designed to address regional needs as identified in each jurisdiction's community justice plan and as the more efficient economical response to specific offender issues for each of the participating jurisdictions. CSCD directors participating in regional programs and services shall work with the directors of other CSCDs impacted by those regional efforts in the planning, development, and implementation of regional programs and services [~~programs/services~~] to address offender needs. [~~Regional programs/services shall be designed to address regional needs as identified in each jurisdiction's community justice plan and as the more efficient economical response to specific offender issues for each of the participating jurisdictions.~~]

(d) Community Service Restitution (CSR). CSCD directors shall maintain written agreements with governmental and/or nonprofit agencies and organizations to provide offenders opportunities to comply with court-ordered community service restitution according to the Texas Code of Criminal Procedure article 42.12 §16 [~~, CSR programs and referrals~~].

(e) Educational Skill Level. Using [~~Utilizing~~] a standardized educational screening instrument, the CSCD director shall ensure that all persons placed on community supervision, who are unable to document attainment of a high school diploma or GED[~~,~~] shall be screened to determine if the persons possess: [~~they:~~]

(1) Educational [~~possess educational~~] skills equal to or greater than the sixth grade level; or [~~and~~]

(2) The [~~possess the~~] intellectual capacity or learning ability to achieve the sixth grade skills level. Programs that [~~which~~] assist offenders in attaining the educational skill level of sixth grade and above[~~,~~] shall be developed and/or made available to the courts for offender referral. CSCD directors may maintain written agreements with school and volunteer organizations to provide tutoring to teach reading to functionally illiterate offenders.

(f) Methods for Measuring the Success of Community Supervision and Corrections Program.

(1) For purposes of Texas Government Code §509.007(b), the method for measuring program completion is defined as the completion of all required components of the program, and/or an offender's release from the program that is not related to any non-compliant behavior[~~,~~] an inappropriate placement[~~;~~] or death.

(2) The method for measuring recidivism is defined as a subsequent arrest [~~rearrest~~] for a new separate offense that is punishable by incarceration (i.e., Class B misdemeanors [~~Misdemeanors~~] and up). This definition does not include arrests for motions to revoke [~~Motions To Revoke~~] community supervision and bond forfeitures.

(g) Conflicts of Interest. The CSCD director shall ensure that there is a written policy concerning conflicts of interest. The policy shall address the prohibition of possible conflicts of interest affecting the CSCD, its supervision officers or employees.

(h) Partnerships with Law Enforcement Agencies. [~~, etc. At the direction of the district judge or judges,~~] CSCDs shall cooperate with and provide assistance to municipal, county and state law enforcement agencies or peace officers in situations relating [~~related~~] to offender supervision, absconder apprehension, victim services, and other community-based criminal justice activities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 29, 2007.

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Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 463-0422

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37 TAC §163.36

The Texas Board of Criminal Justice proposes amendments to §163.36, Mentally Impaired Offender Supervision. The proposed amendments are necessary to add clarity.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to ensure the effective community supervision of mentally impaired offenders.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §509.003 and §614.013.

Cross Reference to Statutes: Texas Government Code, §509.003 and §614.013.

§163.36. Mentally Impaired Offender Supervision.

(a) A mentally impaired offender is defined as one with an Axis I or Axis II disorder as identified in [~~defined by~~] the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), that inhibits their ability to comply with conditions of supervision, other than solely substance abuse dependence.

(b) Community Supervision and Corrections Department (CSCD) [~~CSCD~~] Directors shall develop and implement policies and procedures for the effective supervision of mentally impaired offenders. Policies and procedures shall address at least the following and any other requirements imposed [~~policies required~~] by special grant conditions:

(1) Contact standards;

(2) Treatment referral process within and outside of jurisdiction;

(3) Coordination of services with treatment providers;

(4) Treatment participation requirements;

(5) Recommendations for [~~Recommend~~] modified conditions of supervision based on offenders progress, risk factors or ability to comply;

(6) Caseload size; and

(7) Violation procedures.

(c) Community supervision officers shall collaborate with collateral sources[~~, See TDCJ-CJAD §163.35(c) 7,~~] and coordinate services with agencies within and outside the criminal justice system to address the needs of the mentally impaired offender.

(d) Departments closing or transferring out of county supervision of a mentally impaired offender shall complete a supervision summary [~~report~~] within 14 days and forward the summary and all other pertinent treatment information to the criminal justice agency that assumes supervision of the offender.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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37 TAC §163.39

The Texas Board of Criminal Justice proposes amendments to §163.39, Residential Services. The proposed amendments are necessary to add clarity and conform to state and federal law.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide the courts with a sentencing alternative for confining offenders placed on community supervision.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §509.003.

Cross Reference to Statutes: Texas Government Code, §492.013.

§163.39. Residential Services.

(a) General Administration.

(1) Purpose. Residential facilities and contract residential beds funded by the Texas Department of Criminal Justice - Community Justice Assistance Division (TDCJ-CJAD) [~~TDCJ-CJAD~~] shall provide the courts with a sentencing alternative for the purpose of:

(A) Confining [~~confining~~] offenders placed on community supervision and others who are eligible in accordance with statutes;

(B) Providing [~~providing~~] sanctions, services, and programs to modify criminal behavior, deter criminal activity, protect the public and restore victims of crime; [~~and~~]

(C) Strengthening [~~strengthening~~] and expanding the options that are available to judges to impose alternatives other than imprisonment for offenders who violate court-ordered conditions of community supervision; and [~~.~~]

(D) Reducing the offender's likelihood of a subsequent arrest, recidivism and technical violations.

(2) Feasibility Studies. [~~studies.~~] A judicial district interested in establishing a residential Community Corrections Facility (CCF) [~~or County Correctional Center (CCC)~~] shall first conduct and prepare a feasibility study in accordance with the TDCJ-CJAD *Feasibility Study Guidelines-Community Corrections Facility.* [~~TDCJ-CJAD Feasibility Study Guidelines Community Corrections Facility (January 2002).~~] The product and results of such feasibility study shall be submitted to TDCJ-CJAD. After the receipt by TDCJ-CJAD of the initial feasibility study related to a proposed CCF, the Community Supervision and Corrections Department (CSCD) [~~CSCD/agency~~] may be required to provide supplemental information or additional materials for further review and consideration.

(3) Notice of Construction or Operation of a CCF [~~or Other Facilities~~].

(A) If a CSCD or private vendor operating under a contract with a CSCD or judicial district proposes to construct or operate a CCF [~~or other correctional or rehabilitation facility~~] within 1,000 feet of a residential area, a primary or secondary school, property designated as a public park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship, the CSCD shall [~~must~~] prominently post an outdoor sign at the proposed location of the facility. The sign shall [~~must~~] be at least 24 by 36 inches in size written in lettering at least two (2) inches in size. The sign shall [~~must~~] state that a correctional or rehabilitation facility is intended to be located on the premises, and provide the name and business address of the CSCD. The municipality or county in which the CCF [~~or other correctional or rehabilitation facility~~] is to be located may require the sign to be both in English and a language other than English, if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

(B) The CSCD shall [~~must~~] provide notice of the proposed location of the facility to the commissioners court of the county and/or governing body of the municipality where the facility is intended to be located not later than 60 days before the CSCD begins construction or operation of the facility. The notice shall contain the following: [~~if the commissioners court or governing body has submitted, by resolution, a written request to receive notice.~~]

(i) A statement of the entity's intent to construct or operate a correctional or rehabilitation facility in an area;

(ii) A description of the proposed location of the facility; and

(iii) A statement that Texas Local Government Code, Chapter 244 governs the procedure for notice of and consent to the facility.

(4) Public Meetings. A CSCD or private vendor having a contract with a CSCD or judicial district shall [~~may~~] not establish a CCF [~~or other correctional or rehabilitation facility~~] unless the community justice council serving the CSCD has held a public meeting before the action is taken. In addition, a CSCD may not expend funds provided by the TDCJ-CJAD to lease or purchase real property, construct buildings, or use a facility or real property acquired or improved with state funds for a CCF unless the community justice council serving the CSCD has held a public meeting before the action is taken. The public meeting shall [~~must~~] be held at a site as close as practicable to the location at which the proposed action is to be taken. The meeting shall [~~must~~] not be held on a Saturday, Sunday[~~,~~] or legal holiday. The meeting shall [~~must~~] begin after 6:00 p.m. More than 30 days before the date of the meeting, the department that the facility is to serve, or a vendor proposing to operate a facility, at a minimum shall: [~~must:~~]

(A) Publish [~~publish~~] by advertisement a notice that is not less than three and a half (3 1/2) inches by five (5) inches of the date, hour, place and subject of the hearing as required in subsection (a)(4) of this rule in three (3) consecutive issues of a newspaper of, or in newspapers that collectively have, general circulation in the county in which the proposed facility is to be located. The notice shall specifically state the address of the facility or property on which a proposed action is to be taken and provide a description of the proposed action. [~~a notice that is not less than 3 1/2 inches by 5 inches containing the following information:~~]

~~*[(i)* the date, hour, place, subject of the hearing;]~~

~~*[(ii)* address of the facility or property on which a proposed action is to be taken; and]~~

~~*[(iii)* a description of the proposed action]~~

(B) Mail [~~mail~~] a copy of the notice to each police chief, sheriff, city council member, mayor, county commissioner, county judge, school board member, state representative[~~,~~] and state senator who serves or represents the area, unless the proposed facility has been previously authorized to operate at a particular location by a community justice council.

(5) Maximum Resident [~~Offender~~] Capacity and Facility Utilization. The maximum resident [~~offender~~] capacity of a CCF [~~or CCC~~] shall be defined as the total number of residents [~~offenders~~] who can be housed at the facility at any given time as delineated by the operating agency in the most current community justice plan and approved by the TDCJ-CJAD director. CCFs [~~and CCCs~~] funded through TDCJ-CJAD shall reach 90 percent [~~90%~~] capacity within the first six (6) months of operation and maintain a minimum of 90 percent [~~90%~~] thereafter, using [~~utilizing~~] appropriate and eligible placements only. Any revisions to the maximum and minimum resident [~~offender~~] capacities for the CCF [~~or CCC~~] shall be subject to the approval by the TDCJ-CJAD through the community justice plan amendment process.

(6) Contract Residential Services. Business entities, agencies or persons contracting with CSCDs or judicial districts for residential services shall comply with all applicable competitive bidding and other laws and regulations. CSCDs or judicial districts contracting with business entities, agencies or persons for residential services shall comply with any applicable competitive bidding and other laws and regulations. The CSCD director shall monitor, audit[~~,~~] and inspect the performance and compliance of the service provider and vendor with

the terms and conditions of the [~~their~~] contract with the CSCD and with applicable laws and regulations.

(7) Mission Statement. The CSCD director and facility [~~Facility~~] director shall prepare and maintain a mission statement that describes the general purposes and overall goals of the facility's [~~facilities~~] programs.

(b) Personnel.

(1) Screening for Tuberculosis (TB) Infection. The CSCD director or facility [~~Facility~~] director shall ensure that as soon as practicable but not later than seven (7) [~~within 7~~] calendar days of assuming any duties within a CCF, [~~or CCC,~~] all staff undergo a screening for TB [~~tuberculosis~~] infection. Follow-up screening for TB [~~tuberculosis~~] infection shall be conducted on all staff, at a minimum, once every year from the anniversary date of the initial screening. The results of all screenings shall be maintained on file.

(2) Required Personnel. [~~Employment Coordinator.~~]

(A) Each facility with an employment component [~~Restitution Center~~] shall have a designated employment coordinator whose [~~primary~~] duties and responsibilities include assisting residents [~~offenders~~] in obtaining/maintaining employment. The employment coordinator shall be responsible for addressing other employment issues for residents [~~offenders~~] such as résumé development, interviewing skills/techniques[~~,~~] and appropriate dress for job interviews.

(B) Every facility shall have a designated staff member whose duties and responsibilities include facilitating or ensuring the required cognitive and other facility programs are accomplished.

(3) Criminal Histories and Arrest Records. Prior to employment[~~,~~] and on at least an annual or more frequent basis thereafter, criminal histories and arrest records shall be obtained from both the Texas Department of Public Safety (DPS) and National Crime Information Center NCIC on each of the CCF's [~~or CCC's~~] employees, contract vendor staff (if applicable) and volunteers. This requirement shall apply to both vendor contract and the CSCD operated CCFs. Upon verification that no new conviction(s) have occurred, an entry documenting such shall be made in the personnel file. The criminal history document and/or other arrest record documentation shall then be destroyed. Employees who have access to criminal histories must meet the Texas Department of Public Safety (DPS) criteria for accessing the Texas Law Enforcement Telecommunication System (TLETS) operated by the DPS or files containing a copy of an employee's or resident's criminal history. [~~and CCCs. Copies of the criminal history and arrest information and records shall be retained in the individual's personnel file.~~]

(4) Residential Officer Certification. Governed by §163.33(f) of this title. [~~See §163.33 Community Supervision Officers (f).~~]

(5) Residential Personnel Training. Initial Training Requirements and Defensive Driving are governed by §163.33(j) of this title. Training Requirements for Monitoring Self-Administration of Medications are set forth in subsection (n)(10) of this rule. [~~See §163.33 Community Supervision Officers (j); (1) Initial Training Requirements; (2) Defensive Driving.~~]

(c) Building, Safety, Sanitation and Health Codes.

(1) Compliance. The CSCD director and facility [~~Facility~~] director shall ensure that the facility's construction, maintenance[~~,~~] and operations complies with all applicable state, federal and local laws, building codes and regulations related to safety, sanitation and health. Records of compliance inspections, audits[~~,~~] or written reports by internal and external sources shall be kept on file for examination and review by the TDCJ-CJAD and other governmental agencies and authorities from [~~for all time periods from project or~~] program inception forward. The CSCD director and facility [~~Facility~~] director shall promptly notify the TDCJ-CJAD in writing of any circumstances wherein the facility or its operations do not maintain such compliance.

(2) Water Supply. [~~supply.~~] The CSCD director or designee [~~directors or designees~~] shall ensure that the facility's potable water source and supply is [~~must be~~] sanitary and [~~be~~] approved by an independent, qualified agency or individual [~~to be~~] in compliance with the applicable governmental laws and regulations.

(3) Sanitation. The facility shall conform to [~~with~~] the applicable sanitation and health regulations and codes.

(4) Waste. The liquid and solid wastes related to the facility shall be collected, stored and disposed of in accordance with a plan approved [~~an approved plan~~] by the regulatory authority, agency[~~,~~] or department.

(5) Physical Plant [~~plant~~]. The facility's buildings, including the improvements, fixtures, electric[~~,~~] and heating and air conditioning, shall conform to all applicable building codes of federal, state and local laws, ordinances, regulations[~~,~~] and minimum guidelines established by the TDCJ-CJAD for physical plants and facilities housing residents. [~~offenders.~~]

(6) Fires. The facility, its furnishings, fire protection equipment and alarm system shall comply with the regulations of the fire authority having jurisdiction. Fire drills are to be conducted at least quarterly. There shall be a written evacuation plan to be used in the event of a fire. The plan is to be certified by an independent qualified governmental agency or department or individual trained in the application of national and state fire safety codes. Such plan shall be reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. The facility shall [~~have a qualified person~~] conduct [~~a~~] fire inspections [~~inspection~~] at least quarterly or at [~~other~~] intervals approved by the fire authority having jurisdiction. Fire safety equipment located at the facility shall be tested as specified by the manufacturer or the fire authority, whichever is more frequent. An annual inspection of the facility shall be conducted by [~~secured from~~] the fire authority having jurisdiction or other qualified person(s).

(7) Emergency Plan. [~~Plans.~~] There shall be a written emergency plan [~~plans~~] for the facility and its operations, which includes [~~include~~] an evacuation plan, to be used in the event of a major flood, storm[~~,~~] or other emergencies. This plan shall be [~~is~~] reviewed annually and updated, if necessary. Evacuation drills shall [~~are to~~] be conducted at least three (3) times yearly. Each shift at least yearly shall conduct [~~must have conducted~~] an evacuation drill when the majority of residents [~~offenders~~] are present. All facility personnel shall [~~must~~] be trained in the implementation of the written emergency plan. [~~plans.~~] The evacuation plan shall [~~should~~] specify preferred evacuation routes, subsequent dispositions and temporary housing of residents and provisions [~~offenders, and provision~~] for access to medical care or hospital transportation for injured residents [~~offenders~~] and/or staff. The facility's emergency plan [~~plan(s)~~] shall be distributed to local authorities such as law enforcement, state police, civil defense, etc. to keep them informed of their roles in the event of an emergency. The [~~Such~~] emergency plan [~~plan(s)~~] shall include the following:

(A) Location [~~location~~] of buildings/room floor plan;

(B) Use [~~use~~] of exit signs and directional arrows that are easily seen and read [~~red~~]; and

(C) Location(s) [~~location(s)~~] of publicly posted plan.

(d) Separate Offender [~~Inmate~~] Housing. The CSCD director and facility [~~Facility~~] director shall ensure that a facility that is part of or attached to a detention facility or a correctional institution shall house facility residents [~~offenders~~] separately from the offenders incarcerated in the detention facility. [~~inmates.~~] At no time shall the CCF [~~or CCC~~] residents/offenders be co-mingled with these incarcerated offenders. [~~inmates.~~]

(e) Program and Service Areas.

(1) Space and Furnishings. The facility shall have space and furnishings to accommodate activities such as group meetings, private counseling, classroom activities, visitation[~~,~~] and recreation.

(2) Housekeeping and Maintenance. The CSCD director and facility [~~Facility~~] director shall ensure [~~that~~] the facility is clean and in good repair, and a housekeeping and maintenance plan is in effect.

(3) Other Physical Environment and Facilities Issues. In each facility: [~~There shall be written policy and procedures to ensure the following with respect to the CCF and CCC:~~]

(A) Space shall be provided for janitor closets which are equipped with cleaning implements; [~~.~~]

(B) There shall be storage areas in the facility for clothing, bedding[~~,~~] and cleaning supplies; [~~.~~]

(C) There shall be clean, usable bedding, linens [~~linen,~~] and towels for new residents with provision for exchange or laundering on at least a weekly basis; [~~.~~]

(D) On an emergency or indigent basis, the facility shall provide personal hygiene articles; [~~.~~]

(E) There shall be adequate control of vermin and pests; [~~.~~]

(F) There shall be timely trash and garbage removal; and [~~.~~]

(G) Sanitation and safety inspections of all internal and external areas and equipment shall be performed and documented on a routine basis to protect the health and safety of all residents, staff [~~offenders, staff,~~] and visitors.

(f) Supervision.

(1) Operations Manual. An operations manual shall be prepared for and used by each CCF [~~and CCC~~] which shall contain information and specify procedures and policies for resident [~~offender~~] census, contraband, supervision, physical plant inspection and emergency procedures, including detailed implementation instructions. The operations [~~Such operation~~] manual shall be accessible to all employees and volunteers. The operations manual shall include, at a minimum, the matters set forth in the Guidelines for the Policies and Procedures of the TDCJ-CJAD *Funded Residential Facilities*[~~, dated October 31, 2001~~]. The operations manual shall be submitted to the TDCJ-CJAD director [~~Director~~] for review and approval. The manual shall be[~~, and such manual must have been~~] approved by the TDCJ-CJAD director at least 60 days prior to the acceptance of any residents [~~offenders~~] into the facility. [~~Offenders cannot be accepted into the facility until approval is granted by the TDCJ-CJAD.~~] The CSCD director and facility [~~Facility~~] director shall ensure that the operations manual is reviewed at least every two (2) years, and new or revised policies and procedures are made available, including all changes, [~~prior to implementation~~] to designated staff and volunteers prior to implementation. This manual shall be submitted to the TDCJ-CJAD upon request or for auditing purposes.

(2) Staffing Availability. The CSCD director and facility [~~Facility~~] director shall ensure that the facility has the staff needed to provide coverage of designated security posts, surveillance of residents [~~offenders~~] and to perform ancillary functions. The facility shall have at least one (1) staff member on duty that [~~staff member, on duty, who~~] is the same gender as the resident [~~offender~~] population.

(3) Activity Log. The CSCD director and facility [~~Facility~~] director shall ensure that CCF [~~and CCC~~] staff maintain an activity log and prepare shift reports that record, at a minimum, emergency situations, unusual situations and incidents and all absences of residents [~~, unusual incidents and record all absences of offenders~~] from a facility.

(4) Use of Force. The CSCD director and facility [~~Facility~~] director shall ensure that a CCF [~~and CCC~~] has written policies, procedures[~~,~~] and practices that restrict the use of physical force to instances of self-protection, protection of residents [~~offenders~~] or others or prevention of property damage. In no event shall [~~is~~] the use of physical force against a resident be [~~an offender~~] justifiable as punishment. A written report shall be prepared following all uses of force, and [~~all such written reports shall be~~] promptly submitted to the CSCD director and facility [~~Facility~~] director for review and follow-up. The application of restraining devices, aerosol sprays, chemical agents, etc. shall only be accomplished by an individual who is properly trained in the use of such devices and only in an emergency situation for [~~by any individual in~~] self-protection, protection of others or other circumstances as described previously.

(5) Use of Firearms. The CSCD director and facility [~~Facility~~] director shall ensure that the possession of firearms by staff is banned and the use of firearms is prohibited in or on facility property except in the execution of official duties by certified peace officers or other duly licensed law enforcement personnel.

(6) Access to Facility. The facility shall be secured to prevent unrestricted access [~~thereto~~] by the general public or others without proper authorization.

(7) Control of Contraband/Searches. All facilities shall incorporate into the facility operations manual a list of authorized items offenders are allowed to possess while a resident of the facility. All incoming residents shall receive a copy of this list during the intake/orientation process, along with a written explanation of the provisions of Texas Penal Code, Section 38.114, which states that any resident found to possess any item not provided by, or authorized by the facility director, or any item authorized or provided by the facility that has been altered to accommodate a use other than the originally intended use, may be charged with a Class C misdemeanor. Any employee or volunteer who provides contraband to a resident of a CCF may be charged with a Class B misdemeanor. There shall also be policies defining facility shakedowns, strip searches[~~,~~] and pat searches of residents [~~offenders~~] to control contraband and provide for its disposal.

(8) Levels of Security. The CSCD director and facility [~~Facility~~] director shall [~~must~~] ensure that appropriate levels of security are maintained [~~appropriate~~] for the population served by the facility [~~are maintained~~] at all times. These levels of security shall [~~must~~] create, as a minimum, a monitored and structured environment in which a resident's [~~offender's~~] interior and exterior movements and activities can be supervised by specific destination and time. At the discretion of the facility director or designee, residents may be granted exterior movements. [~~The facility director or designee may, at his or her discretion, grant offenders exterior movements.~~] Exterior movements include, but are not limited to employment programs, community service restitution, support/treatment programs[~~,~~] and programmatic incentives. The following minimum requirements shall [~~must~~] be met for all exterior movements:

(A) The [~~the~~] facility director or designee approves the exterior movement;

(B) A [~~a~~] staff member orally advises the resident [~~offender~~] of the conditions and limitations of the exterior movement;

(C) The resident [~~the offender~~] acknowledges in writing an understanding of the conditions and limitations of the exterior movement; and

(D) Exterior [~~exterior~~] movements involving programmatic incentives may only be granted if the following additional requirements are met:

(i) The resident [~~the offender~~] meets all established requirements for the programmatic incentive, as determined by the supervisor of the program, and submits a written request for the exterior movement;

(ii) The [~~the~~] requested absence will not exceed 72 hours unless there are unusual circumstances;

(iii) The resident [~~the offender~~] provides an itinerary for the absence including method of travel, departure and arrival times[~~,~~] and locations during the exterior movement;

(iv) The [~~the~~] facility director or designee approves the itinerary and establishes the conditions of the exterior movement involving programmatic incentives; and

(v) A [~~a~~] staff member shall make random announced or unannounced personal or telephone contacts with the resident [~~offender~~] to verify the location of the resident [~~offender~~] during the exterior movement.

(9) Emergency Furloughs. At the discretion of the facility director or designee, a resident may be granted an emergency furlough for the purpose of allowing a resident [~~furloughs. The facility director or designee may, in his or her discretion, grant an emergency furlough to an offender for the purpose of allowing the offender~~] to attend a funeral, visit a seriously ill person, obtain medical treatment[~~,~~] or attend to other exceptional business. Emergency furloughs may only be granted if the following conditions are met:

(A) The resident [~~the offender~~] submits a written request for the emergency furlough;

(B) The [~~the~~] facility director or designee verifies through an independent source including, but not limited to a physician, Red Cross representative, minister, rabbi, priest[~~,~~] or other spiritual leader that the presence of the resident [~~offender~~] is appropriate;

(C) The resident [~~the offender~~] provides a proposed itinerary including method of travel, departure and arrival times[~~,~~] and locations during the emergency furlough;

(D) The [~~the~~] requested absence shall [~~will~~] not exceed 72 hours unless there are unusual circumstances;

(E) The [~~the~~] court of original jurisdiction approves the travel if the resident [~~offender~~] will depart the State of Texas;

(F) The [~~the~~] facility director or designee approves the itinerary and establishes the conditions of the emergency furlough; and

(G) The [~~the~~] facility director or designee provides by e-mail or fax [~~shall notify by sending an electronic or fax copy of~~] the approved itinerary to the [~~director of the~~] CSCD director of the court of the original/sending jurisdiction prior to the date that the emergency furlough is approved to begin.[~~;~~]

(10) Supervision Process. Governed by §163.5(c) of this title. [~~See §163.35(c) Supervision Process; (3) Case Classification; (5) Case Supervision or Treatment Plan; and, (6) Reassessments.~~]

(11) The CCF shall ensure that Spanish language assistance and the translation of selected documents are provided for Spanish-speaking residents who cannot speak or read English.

(g) Resident [~~Client~~] Abuse, Neglect[~~,~~] and Exploitation. The facility shall [~~must~~] protect the residents [~~offenders~~] from abuse, neglect and exploitation. In accordance with the *Prison Rape Elimination Act of 2003* (Public Law 108-79), all CCFs shall establish a zero tolerance standard for the incidence of sexual assault. Each facility shall make prevention of offender sexual assault a top priority. The CCFs shall have policies and procedures in accordance with national standards published by the Attorney General of the United States. These policies and procedures shall include, but not be limited to the following:

(1) Detection, prevention, reduction and punishment of offender sexual assault;

(2) Standardized definitions to record accurate data regarding the incidence of offender sexual assault; and

(3) A disciplinary process for facility staff who fail to take appropriate action to detect, prevent and reduce sexual assaults, to punish residents guilty of sexual assault and to protect the Eighth Amendment rights of all facility residents.

(h) Rules and Discipline. There shall be documentation of program rule violations and the disciplinary process.

(1) Rules of Conduct. All incoming residents [~~offenders~~] and staff shall receive written rules of conduct which specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation.

(2) Limitations of Corrective Actions. Specific limits on corrective actions and summary punishment shall be established and strictly adhered to in an effort to reduce the potential of staff participating in abusive behavior towards participants. Limits shall include:

(A) No [~~no~~] physical contact by staff shall be made on a resident; [~~offender;~~]

(B) No [~~no~~] profanity, sexual[~~,~~] or racial comments shall be directed at residents by staff; [~~by staff at offenders;~~]

(C) Residents [~~offenders~~] shall not be used [~~utilized~~] to impose corrective actions on other residents; [~~offenders;~~]

(D) The [~~the~~] severity of the corrective action shall be commensurate with the severity of the infraction; and[~~,~~]

(E) The [~~the~~] duration of corrective action shall be limited to the minimum time necessary to achieve effectiveness.

(3) Grievance Procedure. A grievance procedure shall be available to all residents in a CCF. The [~~offenders in CCFs. Such~~] grievance procedure shall include at least one (1) level of appeal[~~,~~] and shall be evaluated at least annually to determine its efficiency and effectiveness.

(4) Spanish translations of the disciplinary rules and procedures shall be provided for Spanish-speaking residents who cannot speak or read English.

(i) Incident Notification. Within 24 hours of occurrence, the CSCD director and facility [~~Facility~~] director shall notify and report by telephone or fax all serious or unusual events pertaining to the facility's operations and staff to: the judge or one of the judges supervising the

department, the TDCJ Emergency Action Center (EAC) in Huntsville, Texas (Phone Number (936) 437-6600; Fax Number (936) 437-8996) and if applicable, the CSCD director of the original/sending jurisdiction if the incident involves a resident from that sending jurisdiction. The TDCJ-EAC shall be responsible for notifying the TDCJ-CJAD director and appropriate CJAD management staff. [facilities operations, staff, and to: the judge or one of the judges supervising the department and the TDCJ Emergency Action Center (EAC) in Huntsville, Texas. Phone # (936) 437-1448; fax # (936) 437-1912, and if applicable, the CSCD director of the original/sending jurisdiction if the incident involves an offender from that sending jurisdiction. The EAC shall be responsible for notifying the TDCJ-CJAD Director and appropriate CJAD management staff.] Such serious and unusual events for this purpose shall include, but are not limited to the following:

(1) The [the] death of a resident [an offender] or staff member while at the facility;

(2) Any [any] incident which results in life threatening or serious bodily injury to a resident [an offender] or staff member while at the facility or on assignment (including emergency furloughs or programmatic incentives) away from the facility;

(3) Major [major] disturbance or riot at the facility or in its vicinity; and

(4) Any [any] incident involving serious misconduct by facility staff, which may result in the filing of criminal charges or civil action; [.]

(5) Any incidence of absconding by a resident convicted of an offense as identified in Title 5 of the Texas Penal Code (Title 5) and placed in the facility for such offense; and

(6) Any incidence of absconding by a resident who is suspected of committing a felony offense during the course of absconding from the facility or within 24 hours after leaving the facility.

(j) Residents' Rights. Residents shall be granted access to courts and any attorney licensed in the United States or a legal aid society (an organization providing legal services to residents or other persons) contacting the resident in order to provide legal services. [Offenders' Rights. Offenders shall be granted access to courts, counsel, and confidential contact with attorneys and their authorized representatives.] Such contacts include, but are not limited to: confidential telephone communications, uncensored correspondence[,] and confidential visits.

(k) Resident [Offender] Eligibility. A CSCD or other governmental entity that operates a residential facility, contracts for the operation of a residential facility[,] or contracts for beds/services[,] shall define a specific target population of medium to high risk/needs offenders to be served. Placement of offenders in a CCF shall only be by an order of the court, which may include a pre-trial agreement signed by the judge presiding over an established drug court. Applicable screening shall be conducted to include screening for substance abuse, medical and mental health issues and shall meet minimum eligibility criteria as outlined in this rule. [section.]

(1) CCFs shall accept only those offenders who meet the target population criteria as defined by the facility and are physically and mentally capable of participating in any program offered at the facility [that requires strenuous physical activity], if participation in the program is required of all residents [offenders] in the facility. Exceptions to this requirement:

(A) Placement is [unless otherwise] prohibited by statute;

(B) The [if the] offender matches the profile of offenders historically committed to county jail/prison from the jurisdiction; or the offender has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of community supervision; and

(C) The [the] local jurisdiction may house offenders convicted under Title 5[, Texas Penal Code,] and in accordance with statute, in the [its] CCF if Title 5 offenders are included in the facility's program proposal within the community justice plan that is submitted by the jurisdiction's community justice council [Community Justice Council] and approved by the local judiciary. In currently operating facilities where the jurisdiction desires to add Title 5 offenders to the [their] target population, a public meeting shall [must] be held, in accordance with the law and TDCJ-CJAD standards and policy, to advise the public of the types of offenders/offenses who will potentially be placed in the facility. Public support shall [will] be considered by the TDCJ-CJAD for final approval of the change in offender population to be targeted. If a jurisdiction has documentation that this requirement was previously met, it can provide that documentation to the TDCJ-CJAD for review and possible exemption from having an additional public meeting. If a facility is approved to house Title 5 offenders, the CSCD director and the facility director shall comply with all applicable provisions contained in the Texas Government Code, §76.016, Victim Notification, the Texas Code of Criminal Procedure (TCCP) Chapter 56, Rights of Crime Victims and TCCP art. 42.21, Notice of Release of Family Violence Offenders. [; and]

[(D) If a facility is approved to house Title 5 offenders, the CSCD director and the facility director shall comply with all applicable provisions contained in the Texas Government Code, Sec. §76.016 Victim Notification, the Texas Code of Criminal Procedure (TCCP) Chapter 56, Rights of Crime Victims, and TCCP Art. 42.21. Notice of Release of Family Violence Offenders].

[(2) Offenders are eligible for placement into a Restitution Center:]

[(A) unless otherwise prohibited by statute;]

[(B) the offender must be employable; and]

(D) [(C)] Prior [prior to] or within ten 10 days after admission to the facility, the offender shall undergo a screening process to include a substance abuse screening instrument to determine the offender's appropriateness for placement. The process shall be documented and maintained in the supervision case file. Should the offender not meet the facility defined eligibility criteria, the offender may be referred back to the court of original jurisdiction.

[(3) Offenders are eligible for placement into County Correctional Centers (CCC):]

[(A) if convicted of a misdemeanor and sentenced to a term of confinement in the county jail;]

[(B) in lieu of jail time as a condition of misdemeanor or felony community supervision;]

[(C) in lieu of jail time as a punishment for violation of conditions of community supervision; or,]

[(D) if required as a condition of community supervision to participate in a work program or counseling program through a CCC.]

[(4) Offenders are eligible for placement into a Boot Camp:]

[(A) if prior to placement, or within ten days after admission, the offender undergoes a physical examination to determine

any medical problems that may prevent the offender from satisfactorily participating in the program. The physical examination report shall be maintained in the offender's medical file; and]

[(B) if prior to placement, or within ten days after admission, the offender undergoes a psychological screening to determine any psychological problems that may prevent the offender from satisfactorily participating in the program. The psychological screening report shall be maintained in the offender's medical file.]

(2) [(l)] Courtesy Supervision. CCFs [or CCCs] shall, on a space available basis, accept eligible adult offenders needing the residential services on courtesy supervision from other jurisdictions. CSCDs that manage CCFs [or CCCs] are responsible for the direct supervision of all residents [offenders] in the CCF [or CCC] while in the residential placement.

(l) [(m)] Denying Admission or Continued Placement. If an offender is placed into a CCF [or a CCC] as a condition of community supervision and the offender is an inappropriate placement, by statute or standard, or does not meet eligibility criteria of the facility as approved by the TDCJ-CJAD, the CSCD or facility [Facility] director [who is responsible for the management of the CCF/CCC] shall notify, in writing, the court of original jurisdiction of these circumstances. If a CCF [or CCC] facility has reached capacity at the time of the eligible offender's placement to that facility, such offender may be placed on a waiting list for that facility and returned to the court of original jurisdiction for further instructions or an alternative sanction.

(m) [(n)] Food Service. The food preparation and dining area shall [must] provide space for meal service based on the population size and need.

(1) Dietary Allowances. Meals shall be approved and reviewed annually by a registered dietician, licensed nutritionist[,] or physician to ensure that the meals [they] meet the nationally recommended allowances for basic nutrition.

(2) Special Diets. Each facility shall provide [for] special diets as prescribed by appropriate medical or dental personnel.

(3) Food Service Management. Food service operations shall be supervised by a staff member who is experienced in institutional food preparation or mass food management. Food [All food] services staff, including residents [offenders] assigned to work in the facility kitchen, shall meet all requirements established by the local health authorities.

(4) Exclusion as Discipline. The use of food as a disciplinary measure is prohibited.

(5) Meal Requirements. The CSCD director or facility director [CSCD Directors or Facility director] shall ensure that at least three (3) meals (including two (2) hot meals) are provided during each 24-hour period. Variations may be allowed based on weekend and holiday food service demands, or in the event of emergency or security situations, provided basic nutritional goals are met.

(n) [(o)] Health Care.

(1) Access to [To] Care.

(A) Residents [Offenders] shall have unimpeded access to health care and to a system for processing complaints regarding health care.

(B) The facility shall have [has] a designated health authority with responsibility for health care pursuant to a written agreement, contract[,] or job description. The health authority may be a physician, health administrator[,] or health agency. In the event that the designated health authority is a free community health clinic (one which provides services to everyone in the community regardless of ability to pay), then the CCF is not required to enter into a written contract or agreement. A copy of the mission statement of the free community health clinic and a copy of the criteria for admission shall be on file in lieu of a contract between the two (2) agencies.

(C) Each CCF shall have a policy defining the level, if any, of financial responsibility to be incurred by the resident [offender] who receives the medical or dental services.

(2) Emergency Health Care.

(A) Twenty-four hour emergency health care shall be [is] provided for residents, to include [offenders, which included] arrangements for the following:

(i) On site emergency first aid and crisis intervention;

(ii) Emergency evacuation of the resident [offender] from the facility;

(iii) Use of an emergency vehicle;

(iv) Use of one (1) or more designated hospital emergency rooms or other appropriate health facilities;

(v) Emergency on-call physician, dentist[,] and mental health professional services when the emergency health facility is not located in a nearby community; and

(vi) Security procedures providing for the immediate transfer of residents, [offenders,] when appropriate.

(B) A training program for direct care [Direct Care] personnel shall be [is] established by a recognized health authority in cooperation with the facility [Facility] director that includes the following:

(i) Signs, symptoms[,] and action required in potential emergency situations;

(ii) Administration of first aid and cardiopulmonary resuscitation (CPR);

(iii) Methods of obtaining assistance;

(iv) Signs and symptoms of mental illness, retardation[,] and chemical dependency; and

(v) Procedures for patient transfers to appropriate medical facilities or health-care providers.

(C) First aid kits shall be [are] available in designated areas of the facility. Contents and locations shall be [are] approved by the health authority.

(3) Health Screening and Medical Examinations. Medical, dental and mental health screening shall be [exam is] performed by health-trained or qualified health-care personnel on all offenders within ten (10) days prior to or after admission to the facility. The purpose of the screening is to determine if the offender has any disease, illness or condition that precludes admission. [prior to placement or within 10 days of placement.] The health screening shall include [screening includes] the following:

(A) Questionnaires for health screening shall be established to document inquiries into and observations of the following: [Inquiry into:]

(i) Current illness and health problems, including venereal diseases and other infectious diseases;

(ii) Dental problems;

(iii) Mental health problems, including suicide attempts or ideation;

(iv) Use of alcohol and other drugs, which includes types of drugs used, mode of use, amounts used, frequency of use, date or time of last use[,] and a history of problems that may have occurred after ceasing use (for example, convulsions); [and]

(v) Other health problems designated by the responsible physician;[.]

(vi) Tuberculosis (TB) [tuberculosis] screening of residents [offenders] shall be completed within seven (7) calendar days of admission into the residential facility and repeated annually thereafter. If a resident was confined in a jail or other correctional facility immediately prior to admission to a CCF, a TB screening test that was completed no more than 30 days prior to transfer to a CCF may be accepted, provided that a TB questionnaire is completed and filed with the TB screening test results.

(B) Observation by qualified healthcare personnel of:

(i) Behavior, which includes state of consciousness, mental status, appearance, conduct, tremor and sweating;

(ii) Body deformities, ease of movement[,] and so forth; and

(iii) Conditions of skin, including trauma markings, bruises, lesions, jaundice, rashes and infestations[,] and needle marks or other indications of drug abuse.

(C) Medical Examinations.

(i) A new resident admitted to the facility who was not transferred from a jail or other correctional facility shall have a medical history and physical examination completed within ten (10) days prior to or after admission to the facility.

(ii) TB screening of residents shall be completed within seven (7) calendar days of admission into the residential facility and repeated annually thereafter. If a resident was confined in a jail or other correctional facility immediately prior to admission to a CCF, a TB screening test that was completed no more than 30 days prior to transfer to a residential facility may be accepted, provided that a TB questionnaire is completed and filed with the TB screening test results.

(iii) [(C)] Medical examinations shall be [are] conducted for any employee or resident [offender] suspected of having a communicable disease.

(4) Serious and Infectious Diseases.

(A) The facility shall provide [provides] for the management of serious and infectious diseases.

(B) The CCFs [CCF's and CCC's] shall have policies and procedures to direct actions to be taken by employees concerning residents [offenders] who have been diagnosed with human immunodeficiency virus (HIV), [HIV,] including, at a minimum, the following:

(i) When and where residents shall [offenders are to] be tested;

(ii) Appropriate safeguards for staff and residents; [offenders;]

(iii) Staff and resident [offender] training;

(iv) Issues of confidentiality; and

(v) Counseling and support services.

(5) Dental Care. Access to dental care shall be [is] made available to each resident. [offender.]

(6) Medications--General Guidelines. [Medications.]

(A) Staff who dispense medication shall be properly credentialed and trained. Staff that supervise self-administration of medication shall be appropriately trained to perform the task.

(B) [(A)] Policy and procedure shall direct the possession and use of controlled substances, prescribed medications, supplies[,] and over-the-counter (OTC) drugs. Prescribed medications shall be dispensed [are administered] according to the directions of the prescribing physician.

(C) Each residential facility shall have a written policy in place that sets forth required procedural guidelines for the administration, documentation, storage, management, accountability of all resident medication, inventory, disposal of medications, handling medication errors and adverse reactions.

(D) [(B)] If medications are distributed by facility staff, records shall be [are] maintained and audited monthly[,] and shall include, but not be limited to the date, time, name of the resident receiving the medication and the name of the staff distributing the medication. [include the date, time, and name of the offender receiving the medication, and the name of the staff distributing it.]

(E) Each facility shall ensure that the phone number of a pharmacy and a comprehensive drug reference source is readily available to the staff.

(7) Medication Storage.

(A) Prescription and OTC medications shall be kept in locked storage and accessible only to staff who are authorized to provide medication. Syringes, needles and other medical supplies shall also be kept in locked storage.

(B) All controlled/scheduled drugs shall be stored under double lock and key.

(C) Each facility shall ensure that all medications, syringes and needles are stored in the original container.

(D) Medications labeled as internal and external only shall not be stored together in the same medication box or medication drawer.

(E) Sample prescription medications provided by physicians shall be stored with proper labeling information that includes the name of the medication, name of the prescribing physician, date prescribed and dosage instructions.

(F) Medications that require refrigeration shall be stored in a refrigerator designated for medications only. A thermometer shall be maintained inside the refrigerator with the temperature checked and recorded daily on a temperature log.

(G) Medications that are discontinued, have expired dates or are no longer in use shall be stored in a separate locked container or drawer until destroyed.

(H) Facilities that allow residents to keep medications in the resident's possession shall have written guidelines specific for keep-on-person (KOP) medications. Staff shall ensure that authorized residents keep medication on their person or safely stored and inaccessible to other residents.

(8) Medication Inventory and Disposal.

(A) Facility staff shall conduct an inventory count of all controlled/scheduled prescription medications daily (at a minimum,

once per 24 hour period). The count shall be conducted and witnessed by one (1) other staff member. Documentation of inventory counts shall be maintained for a minimum period of three (3) years.

(B) The facility shall conduct a monthly inventory of all prescription and OTC drugs provided to or purchased by the resident. The monthly audit shall be conducted by a staff person who is not responsible for conducting the daily inventory counts.

(C) A monthly audit shall be conducted of all medication administration records to verify the accuracy of recorded information. The monthly audit of medication administration records shall be conducted by a staff person who is not responsible for the documentation of medication administration records.

(D) When a discrepancy is noted between the medication administration record and the monthly inventory count, documentation explaining the reason for the discrepancy and action taken to correct it shall be recorded. In the event an inventory count reveals unaccounted for controlled/scheduled medication, an investigation shall be conducted and a summary report written detailing the steps taken to resolve the matter. Until the discrepancy is resolved, an inventory count shall be conducted three (3) times daily (after each shift). The summary report shall be maintained for a minimum period of three (3) years. If misapplication, misuse or misappropriation of controlled/scheduled medication leads to an investigation by law enforcement, such information shall be reported pursuant to subsection (i) of this rule.

(E) Discontinued and outdated medications shall be removed from the current medication storage, stored in a separate locked container and disposed of within 30 days. The drugs designated for disposal shall be recorded on a drug disposal form.

(F) Methods used for drug disposal shall prevent medication from being retrieved, salvaged or used in any way. The disposal of drugs shall be conducted, documented and the process witnessed by one (1) other staff member. The documentation shall include:

(i) Name of the resident and date of disposal;

(ii) Name and strength of the medication;

(iii) Prescription number, sample or OTC lot numbers;

(iv) Amount disposed, reason for disposal and the method of disposal; and

(v) Signatures of the two (2) staff members that witnessed the disposal.

(9) Administration of Medication for Non-Medical Model Facilities.

(A) Prescription medications shall be dispensed only by licensed nurses or other staff who are trained and have the appropriate documented medication certification to dispense medications while under the supervision of a physician or registered nurse. Facilities that do not have licensed nurses or other credentialed staff to dispense medications (non-medical model facilities) shall implement the practice of self-administration of medications.

(B) If medications are dispensed through the practice of self-administration in a non-medical model program, staff trained by a qualified health professional to supervise residents in the self-administration of medications shall monitor the residents during the self-administration process.

(C) Each dose of prescription medication received by the resident shall be documented on the prescription medication administration record and maintained in the resident's medical file. The prescription medication record shall include:

(i) Name of the resident receiving the medication;

(ii) Drug allergies or the absence of known drug allergies;

(iii) Name, strength of medication and route of administration;

(iv) Instructions for taking the medication, the amount taken and the route of administration;

(v) Date and time the medication was provided;

(vi) Prescription number (or lot number for sample drugs) and the initial amount of medication received;

(vii) Prescribing physician and the name of the pharmacy;

(viii) Signature of the resident receiving the medication and the staff person supervising the self-administration of medication;

(ix) The remaining amount of medication after each dose dispensed; and

(x) Comment section for recording a variance, discrepancy or change.

(D) Each dose of OTC medication received by the resident shall be documented on the OTC medication administration record and maintained in the resident's medical file. The OTC drugs purchased by the resident or supplied for the resident in quantities larger than single dose packages shall be recorded on the OTC drug record. The OTC drug record shall include:

(i) The resident's name;

(ii) The name and strength of the medication dispensed;

(iii) Drug allergies or the absence of known drug allergies;

(iv) The dosage instructions and route of administration;

(v) The initial amount received, OTC lot number and the expiration date;

(vi) The date and time the medication was dispensed;

(vii) The amount dispensed and the ending count after each dose;

(viii) Comment section for recording reason for OTC drug or other notations; and

(ix) The signature of the resident and the employee who supervised each dose dispensed.

(E) Facility Stock OTC Drugs. Multiple OTC stock drugs supplied in single dose packaging may be recorded on the same form. The medication drug record for facility stock OTC drugs shall include:

(i) The resident's name;

(ii) The name, strength and route of administration;

(iii) Drug allergies or the absence of known drug allergies;

(iv) The date, time, amount dispensed and the lot number on the container;

(v) Comment section to record the reason the OTC drug was requested; and

(vi) The signature of the resident and the employee who supervised each dose dispensed.

(10) Training for Monitoring Self-Administration of Medications. All residential employees responsible for supervising residents in self-administration of medication, who are not credentialed to dispense medication, shall complete required training before performing this task.

(A) The initial training for new employees shall be four (4) hours in length.

(B) Employees shall complete a minimum of two (2) hours of review training annually thereafter.

(C) The training shall be provided by a physician, pharmacist, physician assistant or registered nurse before supervising self-administration of medications. A licensed vocational nurse (LVN) or paramedic (under supervision) may teach the course from an established curriculum. Topics to be covered shall include:

(i) Prescription labels;

(ii) Medical abbreviations;

(iii) Routes of administration;

(iv) Use of drug reference materials;

(v) Monitoring/observing insulin preparation and administration;

(vi) Storage, maintenance, handling and destruction of medication;

(vii) Transferring information from prescription labels to the medication administration record and documentation requirements, including sample medications; and

(viii) Procedures for medication errors, adverse reactions and side effects.

(11) [~~(7)~~] Female Residents. [~~Female Offenders.~~] If female residents [~~offenders~~] are housed, access to pregnancy management services shall be [~~is made~~] available.

(12) [~~(8)~~] Mental Health. Access to mental health services shall be [~~is made~~] available to residents. [~~offenders.~~]

(13) [~~(9)~~] Suicide Prevention. Each facility shall have [~~There is~~] a written suicide prevention and intervention program [~~that is~~] reviewed and approved by a qualified medical or mental health professional. All staff with resident [~~offender~~] supervision responsibilities shall be [~~are~~] trained in the implementation of the suicide prevention program.

(14) [~~(10)~~] Personnel.

(A) If treatment is provided to residents [~~offenders~~] by health-care personnel other than a physician, psychiatrist, dentist, psychologist, optometrist, podiatrist[~~,~~] or other independent provider, such treatment shall be [~~is~~] performed pursuant to written standing or direct orders by personnel authorized by law to give such orders.

(B) If the facility provides medical treatment, personnel who provide health-care services to residents shall be [~~offenders are~~] qualified and appropriately licensed. Verification of current credentials and job descriptions shall be [~~are~~] on file in the facility. Appropriate state and federal licensure, certification[~~,~~] or registration requirements[~~,~~] and restrictions apply.

(15) [~~(11)~~] Informed Consent. If the facility provides medical treatment, the facility shall ensure residents are provided information to [~~offenders~~] make medical decisions with informed consent. All informed consent standards in the jurisdiction shall be [~~are~~] observed and documented for resident [~~offender~~] care.

(16) [~~(12)~~] Participation in Research. Residents shall [~~Offenders do~~] not participate in medical, pharmaceutical[~~,~~] or cosmetic experiments. This does not preclude individual treatment of a resident [~~an offender~~] based on resident's [~~his or her~~] need for a specific medical procedure that is not generally available.

(17) [~~(13)~~] Notification. Individuals designated by the resident shall be [~~offender are~~] notified in case of serious illness or injury.

(18) [~~(14)~~] Health Records.

(A) If medical treatment is provided by the facility, accurate health records for residents shall be [~~offenders are~~] maintained separately and confidentially.

(B) If medical treatment is provided by the facility, the method of recording entries in the records, the form and format of the records, and the procedures for [~~their~~] maintenance and safekeeping shall be [~~are~~] approved by the health authority.

(C) If medical treatment is provided by the facility, for the residents [~~offenders~~] being transferred to other facilities, summaries or copies of the medical history record shall be [~~are~~] forwarded to the receiving facility prior to or at arrival.

(o) [~~(p)~~] Discharge From Residential Facilities.

(1) Victim Notification. [~~Notifications.~~] The CSCD director and facility [~~Facility~~] director shall ensure there are procedures, policies[~~,~~] and practices that comply with Texas Government Code §76.016, TCCP art. 42.21(a) [~~Texas Code of Criminal Procedure Art. 42.21(a),~~] and other applicable laws as to the notifications [~~to be~~] made to certain crime victims of offenders who are residents in its facilities or subject to its programs.

(2) Discharge. Discharge from residential facilities shall be based on the following criteria:

(A) The resident [~~the offender~~] has made sufficient progress towards meeting the objectives of the supervision plan and program requirements;

(B) The resident [~~the offender~~] has satisfied a sentence of confinement;

(C) The resident [~~the offender~~] has satisfied a period of placement as a condition of community supervision or satisfied the conditions of a pre-trial agreement signed by a judge presiding over an established drug court;

(D) The resident [~~the offender~~] has demonstrated noncompliance with program criteria or court order;

(E) The resident [~~the offender~~] manifests a non-emergency medical problem that prohibits participation and/or completion of the residential program requirements;

(F) The resident [~~the offender~~] displays symptoms of a psychological disorder that prohibits participation and/or completion of the residential program requirements; or

(G) The resident [~~the offender~~] is identified as inappropriate or ineligible for participation in the residential program as defined by facility eligibility criteria, statute[~~,~~] or standard.

(3) Discharge Report. The CSCD director and facility [~~Facility~~] director shall ensure [~~that~~] a report is prepared at the termination of program participation that reviews the resident's [~~offender's~~] performance. A copy of the report shall be provided to the receiving CSCD community supervision officer (CSO).

(p) [~~(q)~~] Basic Services and Programs.

(1) Each facility shall, at a minimum, provide programs in the following areas which shall [~~will~~] include, but not be limited to:

(A) [~~(1)~~] Education [~~education~~] programs;

(B) [~~(2)~~] Rehabilitation [~~rehabilitation~~] programs based on the mission of the facility;

(C) [~~(3)~~] Community [~~community~~] service restitution/work detail;

(D) [~~(4)~~] Recreational [~~recreational~~] programs; and

(E) [~~(5)~~] Cognitive [~~cognitive~~] based programs.

(2) Facilities serving other jurisdictions shall have a procedure in place designed to assist the resident in obtaining employment in the jurisdiction to which the resident will be released. At a minimum, an aftercare/supervision plan shall be provided to the original jurisdiction and shall outline aftercare/supervision strategies best designed to sustain progress.

(3) Each facility shall have a family support program designed to educate family members in the goals of the facility and resident, as well as to incorporate family assistance during and after residency.

(4) Each facility incorporating an employment component shall provide an initial programming phase of not less than 30 days prior to work release. A longer period of programming shall be provided depending upon documented risk/needs assessment and/or program progress.

(q) [~~(r)~~] Mail, Telephone[~~,~~] and Visitation. The CSCD director and facility [~~Facility~~] director shall have written policies which govern the facility's mail, telephone[~~,~~] and visitation privileges for residents, [~~offenders,~~] including mail inspection, public phone use[~~,~~] and routine and special visits. The policies shall address compelling circumstances in which a resident's [~~an offender's~~] mail both incoming and outgoing may be opened, but not read, to inspect for contraband.

(r) [~~(s)~~] Religious Programs.

(1) The CSCD director and facility [~~Facility~~] director shall have written policies that govern religious programs for residents. [~~offenders.~~] The policies shall provide that residents [~~offenders~~] have the opportunity to voluntarily practice the requirements of a resident's [~~their~~] religious faith, have access to worship/religious services[~~,~~] and the use or contact with community religious resources, when appropriate.

(2) Under Texas Civil Practice & Remedies Code, Chapter [~~chapter~~] 110, a CSCD or CCF may not substantially burden a resident's [~~an offender's~~] free exercise of religion except with the least restrictive measures in furtherance of a compelling interest. Pursuant to Texas Government Code §76.018, there is a presumption that a policy or practice that applies to a resident [~~an offender~~] in the custody of a CCF is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The presumption may be rebutted with evidence provided by the resident. [~~offender.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 29, 2007.

TRD-200705954
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 13, 2008
For further information, please call: (512) 463-0422

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.1

The Texas Board of Occupational Therapy Examiners proposes amendments to §367.1, concerning Continuing Education. The section is being amended to emphasize the responsibility of the licensee in making continuing education choices.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section.

Mr. Maline also has determined that for the each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be the consistency of continuing educational requirements for all licensees. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or augusta.gelfand@mail.capnet.state.tx.us.

The amendments are proposed under the Occupational Therapy Practice Act (Act), Title 3, Chapter 456, Subchapter H, of the Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by the amended section.

§376.1. Continuing Education.

(a) - (c) (No change.)

(d) Types of Continuing Education.

(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with patients or clients hereafter referred to as Type 2. [~~(AOTA's Category 1 or 2)~~]

(A) - (B) (No change.)

(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, quality improvement, administration, reimbursement and other occupational therapy related subjects. [~~(AOTA's Category 3)~~]

(e) Specific [~~A specific~~] continuing educational activities may be counted only one time in the licensee's career unless content has been updated or revised.

(f) (No change.)

(g) Licensees are responsible for choosing Type 1 or Type 2 CE according to the definitions in this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706061

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: January 13, 2008

For further information, please call: (512) 305-6900

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CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes amendments to §372.1, concerning Provision of Services. The section is being amended to emphasize the roles of the occupational therapist and the occupational therapy assistant in the Plan of Care and Discharge.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section.

Mr. Maline also has determined that for the each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be the consistency of continuing educational requirements for all licensees. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or augusta.gelfand@mail.capnet.state.tx.us.

The amendments are proposed under the Occupational Therapy Practice Act (Act), Title 3, Chapter 456, Subchapter H of the Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by the amended section.

§372.1. Provision of Services.

(a) - (d) (No change.)

(e) Plan of Care.

(1) Only an OTR, LOT or OT may initiate, develop, modify or complete an occupational therapy plan of care. It is a violation of the OT Practice Act for a COTA to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the patient should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) The OTR, LOT or OT and COTA, LOTA or OTA may work jointly to revise the short-term goals, but the final determination resides with the OTR or LOT. Revisions to the plan of care and goals must be documented by the OTR and/or COTA to reflect revisions at the time of the change.

(3) (No change.)

(4) Only occupational therapy practitioners licensed by the Texas Board of Occupational Therapy Examiners (TBOTE) may implement the plan of care once it is established.

(5) - (9) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706062

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: January 13, 2008

For further information, please call: (512) 305-6900

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CHAPTER 373. SUPERVISION

40 TAC §373.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §373.3, concerning Supervision of a Licensed Occupational Therapy Assistant. The section is being amended to emphasize the supervision requirements and use of the COTA Supervision Log.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section.

Mr. Maline also has determined that for the each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be the consistency of continuing educational requirements for all licensees. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or augusta.gelfand@mail.capnet.state.tx.us.

The amendments are proposed under the Occupational Therapy Practice Act (Act), Title 3, Chapter 456, Subchapter H of the Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by the amended section.

§373.3. Supervision of a Licensed Occupational Therapy Assistant.

(a) A COTA/LOTA shall provide occupational therapy services only under the supervision of a licensed occupational therapist.

(b) [~~(a)~~] Supervision of a full time employed COTA or LOTA by the OTR or LOT includes:

(1) A minimum of six hours a month of frequent communication between the supervising OTR(s) or LOT(s) and the COTA or LOTA by telephone, written report, email, conference etc., including review of progress of patient's/client's assigned, plus

(2) A minimum of two hours of supervision a month of face-to-face, real time interaction with the OTR(s) or LOT(s) observing the COTA or LOTA providing services with patients/clients.

(3) These hours shall be documented on a COTA/LOTA Supervision Log for each employer. The OTR/LOT or employer may request a copy of the COTA Supervision Log. The COTA Supervision Log is kept by the COTA/LOTA and signed by an OTR/LOT when supervision is given.

(c) [~~(b)~~] Licensees working part-time or less than a full month within a given month may pro-rate these hours, but shall document no less than four hours of supervision per month, one hour of which includes face-to-face, real time interaction by the OTR(s) and LOT(s) observing the COTA or LOTA providing services with patients/clients. Those months where the licensee does not work, he or she shall write N/A in the COTA Supervision Log for that month.

(d) [~~(c)~~] COTAs or LOTAs with more than one employer must have a supervisor at each job whose name is on file with the board and must receive supervision by an OTR or LOT, as outlined for part-time employment in this section.

(e) [~~(d)~~] The COTA or LOTA must include the name of the supervising OTR or LOT in each patient's treatment note.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706063

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: January 13, 2008

For further information, please call: (512) 305-6900

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 255. FINANCE

1 TAC §255.1

The Commission on State Emergency Communications withdraws from consideration the proposed amendments to §255.1, which appeared in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4829).

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705963
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Effective date: November 30, 2007
For further information, please call: (512) 305-6930

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.16

Proposed amended §465.16, published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2815), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on November 27, 2007.

TRD-200705902

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22 TAC §465.18

Proposed amended §465.18, published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2816), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on November 27, 2007.

TRD-200705903

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 95. UNIFORM COMMERCIAL CODE

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §95.111, §95.113

The Office of the Secretary of State adopts amendments to 1 TAC §95.111 and §95.113, Subchapter A, General Provisions, concerning filing fees and methods of payments, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7170) and will not be republished.

The purpose of the adopted amendments is to more accurately reflect current filing policies and procedures due to statutory requirements.

No comments were received regarding adoption of the amended rules.

The amendments are adopted under §§9.501 - 9.527, Texas Business and Commerce Code; §§35.01 - 35.09, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; §128, Texas Agriculture Code; §188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; and §§51.901 - 51.905, Texas Government Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code; Subchapter A of Chapter 35, Miscellaneous; Chapter 14, Uniform Federal Lien Registration Act; Subchapter D, Chapter 70, Texas Property Code; Subchapter E, Chapter 70, Texas Property Code; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; and Subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 27, 2007.

TRD-200705891

Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: December 17, 2007
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5701

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SUBCHAPTER C. UCC INFORMATION MANAGEMENT SYSTEM

1 TAC §95.312

The Office of the Secretary of State adopts the repeal of 1 TAC §95.312, Subchapter C, UCC Information Management System, concerning the UCC Information Management System, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7170) and will not be republished.

The purpose of the adopted repeal is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

No comments were received regarding the adopted repeal of the old rule.

The repeal is adopted under §§9.501 - 9.527, Texas Business and Commerce Code; §§35.01 - 35.09, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; §128, Texas Agriculture Code; §188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; and §§51.901 - 51.905, Texas Government Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code; Subchapter A of Chapter 35, Miscellaneous; Chapter 14, Uniform Federal Lien Registration Act; Subchapter D, Chapter 70, Texas Property Code; Subchapter E, Chapter 70, Texas Property Code; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; and Subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 27, 2007.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: December 17, 2007
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5701

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1 TAC §95.312

The Office of the Secretary of State adopts new 1 TAC §95.312, Subchapter C, UCC Information Management System, concerning filing documents, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7171) and will not be republished.

The purpose of the adopted new Uniform Commercial Code rule is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under §§9.501 - 9.527, Texas Business and Commerce Code; §§35.01 - 35.09, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; §128, Texas Agriculture Code; §188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; and §§51.901 - 51.905, Texas Government Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code; Subchapter A of Chapter 35, Miscellaneous; Chapter 14, Uniform Federal Lien Registration Act; Subchapter D, Chapter 70, Texas Property Code; Subchapter E, Chapter 70, Texas Property Code; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; and Subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 27, 2007.

TRD-200705894
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: December 17, 2007
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5701

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1 TAC §95.313

The Office of the Secretary of State adopts new 1 TAC §95.313, Subchapter C, UCC Information Management System, concerning filing documents, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7171) and will not be republished.

The purpose of the adopted new Uniform Commercial Code rule is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under §§9.501 - 9.527, Texas Business and Commerce Code; §§35.01 - 35.09, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; §128, Texas Agriculture Code; §188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; and §§51.901 - 51.905, Texas Government Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code; Subchapter A of Chapter 35, Miscellaneous; Chapter 14, Uniform Federal Lien Registration Act; Subchapter D, Chapter 70, Texas Property Code; Subchapter E, Chapter 70, Texas Property Code; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; and Subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200705895
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5701

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SUBCHAPTER F. FILING AND DATA ENTRY PROCEDURES

1 TAC §95.418

The Office of the Secretary of State adopts new 1 TAC §95.418, Subchapter F, Filing and Data Entry Procedures, concerning filing documents, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7172) and will not be republished.

The purpose of the adopted new Uniform Commercial Code rules is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under §§9.501 - 9.527, Texas Business and Commerce Code; §§35.01 - 35.09, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; §128, Texas Agriculture Code; §188,

Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; and §§51.901 - 51.905, Texas Government Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code; subchapter A of Chapter 35, Miscellaneous; Chapter 14, Uniform Federal Lien Registration Act; subchapter D, Chapter 70, Texas Property Code; subchapter E, Chapter 70, Texas Property Code; subtitle H of Title 5, Texas Agriculture Code; subtitle E of Title 6, Texas Agriculture Code; and subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 27, 2007.

TRD-200705896
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: December 17, 2007
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5701

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SUBCHAPTER G. SEARCH REQUESTS AND REPORTS

1 TAC §95.503

The Office of the Secretary of State adopts an amendment to 1 TAC §95.503, Subchapter G, Search Requests and Reports, concerning search rules, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7172) and will not be republished.

The purpose of the adopted amendment is to more accurately reflect current filing policies and procedures due to statutory requirements.

No comments were received regarding adoption of the amended rules.

The amendment is adopted under §§9.501 - 9.527, Texas Business and Commerce Code; §§35.01 - 35.09, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; §128, Texas Agriculture Code; §188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; and §§51.901 - 51.905, Texas Government Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code; Subchapter A of Chapter 35, Miscellaneous; Chapter 14, Uniform Federal Lien Registration Act; Subchapter D, Chapter 70, Texas Property Code; Subchapter E, Chapter 70, Texas Property Code; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; and Subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 27, 2007.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5701

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SUBCHAPTER H. OTHER NOTICES OF LIENS

1 TAC §§95.600 - 95.605, 95.607

The Office of the Secretary of State adopts amendments to 1 TAC §§95.600 - 95.605 and §95.607, Subchapter H, Other Notices of Liens, concerning filing recording of liens, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7173) and will not be republished.

The purpose of the adopted amendments are to more accurately reflect current filing policies and procedures due to statutory requirements.

No comments were received regarding the adoption of the amended rules.

The amendments are adopted under §§9.501 - 9.527, Texas Business and Commerce Code; §§35.01 - 35.09, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; §128, Texas Agriculture Code; §188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; and §§51.901 - 51.905, Texas Government Code, which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code; Subchapter A of Chapter 35, Miscellaneous; Chapter 14, Uniform Federal Lien Registration Act; Subchapter D, Chapter 70, Texas Property Code; Subchapter E, Chapter 70, Texas Property Code; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; and Subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: December 17, 2007
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5701

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1 TAC §95.606

The Office of the Secretary of State adopts the repeal of 1 TAC §95.606, Subchapter H, Other Notices of Liens, concerning Notice of Judicial Finding of Fact, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7174) and will not be republished.

The purpose of the adopted repeal is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

No comments were received regarding the adopted repeal of the old rule.

The repeal is adopted under §§9.501 - 9.527, Texas Business and Commerce Code; §§35.01 - 35.09, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; §128, Texas Agriculture Code; §188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; and §§51.901 - 51.905, Texas Government Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code; Subchapter A of Chapter 35, Miscellaneous; Chapter 14, Uniform Federal Lien Registration Act; Subchapter D, Chapter 70, Texas Property Code; Subchapter E, Chapter 70, Texas Property Code; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; and Subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 27, 2007.

TRD-200705889
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: December 17, 2007
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5701

♦ ♦ ♦

1 TAC §95.606

The Office of the Secretary of State adopts new 1 TAC §95.606, Subchapter H, Other Notices of Liens, concerning filing documents, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7174) and will not be republished.

The purpose of the adoption of the new Uniform Commercial Code rule is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under §§9.501 - 9.527, Texas Business and Commerce Code; §§35.01 - 35.09, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; §128, Texas Agriculture Code; §188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; and §§51.901 - 51.905, Texas Government Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code; Subchapter A of Chapter 35, Miscellaneous; Chapter 14, Uniform Federal Lien Registration Act; Subchapter D, Chapter 70, Texas Property Code; Subchapter E, Chapter 70, Texas Property Code; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; and Subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Business and Public Filings
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For further information, please call: (512) 463-5701

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CHAPTER 96. ELECTRIC UTILITY TRANSITION PROPERTY NOTICE FILINGS

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §96.6

The Office of the Secretary of State adopts the repeal of 1 TAC §96.6, Subchapter A, General Provisions, concerning payment polices, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7175) and will not be republished.

The purpose of the adopted repeal is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

No comments were received regarding the adopted repeal of the old rule.

The repeal is adopted under §§9.501 - 9.527, Texas Business and Commerce Code and §39.309, Texas Utilities Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code and Subchapter G of Chapter 39, Texas Utilities Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 27, 2007.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5701

♦ ♦ ♦

1 TAC §96.6, §96.7

The Office of the Secretary of State adopts new 1 TAC §96.6 and §96.7, Subchapter A, General Provisions, concerning filing documents, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7175) and will not be republished.

The purpose of the adopted new Electric Utility Transition Property Notice Filings rules is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

No comments were received regarding the adoption of the new rule.

The new rules are adopted under §§9.501 - 9.527, Texas Business and Commerce Code, and §39.309, Texas Utilities Code, which provides the Office of the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code and Subchapter G of Chapter 39, Texas Utilities Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lorna Wassdorf
Director, Business and Public Filings
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For further information, please call: (512) 463-5071

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PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

The administrative director of the Office of Court Administration (OCA) of the Texas Judicial System adopts 1 TAC Chapter 175, §§175.1 - 175.7, concerning its collection improvement program, with changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5537). The chapter is adopted to effectuate Article 103.0033 of the Code of Criminal Procedure, as adopted by the 79th Legislature.

The new rules would manifest the agency's compliance with legislative mandates to: (1) cooperate with the Comptroller of Public Accounts (Comptroller) to develop a methodology for determining the collection rate of the designated local governments; (2) develop and publish on its website the program requirements; (3) develop and publish local government report requirements; and (4) cooperate with the Comptroller to develop audit standards and to provide a full explanation of the methodology, requirements and standards to the stakeholders. Implementing a collection program based on OCA's criteria could help local court jurisdictions improve the collection rate of court costs, fees, and fines at state and local levels.

As a result of several factors, including the changes to the rule proposal in response to comments, the revenue projections from the original enactment, as reflected in the proposal preamble, must be adjusted downward. In addition to the dilution of the program requirements represented by some of the changes, revenue is expected to be lower due to a decrease in filings, the waiver granted to Harris County, and delays in implementation of the program that appear related to anticipation of the passage of Senate Bill 280 in the 80th Legislature.

Changes in the adopted chapter respond to public comments.

Summary of comments

The agency received comments from Texas Legal Services Center. This party was in favor of the rules, but requested clarification regarding the monthly reports of waiver of fees due to indigent status. The agency agrees with the need to clarify the rule and will do so.

The agency received comments from the office of the County Attorney for Harris County. This party generally is against application of the rules to Harris County Justice Courts, and asserts the program is too expensive for such a large jurisdiction. The agency's response is that the Legislature made OCA's program applicable to Harris County, that the agency already granted a waiver to Harris County, and that, as described in the preamble, local governments would recoup increased program costs and experience a positive revenue gain if the program is properly implemented. This party also offered several specific comments regarding the proposed rules. Comments and agency responses are as follows:

(1) Comment: The requirements of §175.3(d)(1) of the elements required in an application are too costly and do little to affect the enforcement of the collection. The agency disagrees. The agency believes the information requested in the application is the minimum information needed to determine the payment terms that should be offered to the defendant to meet the goals described in §175.3(c)(3) ("to have the highest payment amounts in the shortest period of time that the defendant can successfully meet").

(2) Comment: The rules do not appropriately define their applicability when deferred disposition or community supervision is imposed. The agency agrees with these comments and will clarify the rules in this regard.

(3) Comment: The factors used to determine collection rate should be clarified, and it should include dispositions. The agency disagrees, but would refer the commenter to make inquiry with the Comptroller for further information on the methodology, and would note that the Comptroller's methodology does include a calculation of a compliance rate as well as a collection rate.

(4) Comment: The reports by the courts described in §175.4(c) should be merged with the monthly reports collected by the agency for the Texas Judicial Council. The agency agrees that

this would be preferable, but the mandatory monthly reports for the Texas Judicial Council apply to all jurisdictions, while the program applies to only some jurisdictions, and applying §175.4(c) to the smaller jurisdictions would be unduly burdensome to them.

The agency also received comments from the office of the District Clerk of McLennan County. The commenter disagrees with language in §175.3(c)(3) that she contends would inhibit collection of funds from defendants confined or imprisoned in a correctional facility. She also comments on the audit standards in §175.5(2)(A) as related to defendants who are released from confinement. The agency agrees to change the rules to eliminate references to time deadlines for defendants who are released from confinement. And, the reference in proposed §175.1(d) to systemic policy efforts reflects the agency's commitment to the Texas application of efforts by the Justice Center at the Council of State Governments to address the re-entry implications of currently incoherent policy on the competing financial obligations of the criminal justice population, particularly the re-entering population. The commenter also suggests changing §175.4(d)(6) to make it clear that issuance of a capias pro fine is not mandatory, and the agency agrees. Finally, she notes the statement in §175.5(2)(A) that payment plans imposed by a judge are not subject to these requirements. The agency agrees to clarify the language.

The agency received comments from an individual who is in favor of not collecting from prisoners until they are released from confinement. The agency will clarify the rules to specify that the program only applies after defendants are released, but that this would not preclude other lawful collections methods by a county.

The agency received comments from two agency employees. One requests changing §175.3(d)(6) to use the term "capias pro fine" instead of "warrant," and the agency agrees. He also suggests clarification of §175.4(c)(3)(B) regarding waiver of court costs and fees, and the agency agrees. The other agency employee suggests that §175.3(d)(4) and (5) be amended to require telephone and mail contact within 15 days of a missed payment rather than 30 days. The agency agrees that this is the better practice, but declines to impose a shorter time requirement on the programs at this time.

The agency received comments from the office of the Criminal District Attorney of Brazoria County. She commented that an exception to the application process should be made for individuals with language or disability barriers. The agency agrees. She also commented that the rules should address the circumstances of post-imprisonment collections. The agency agrees. She also commented that crime victim restitution should be prioritized over court costs, fines and fees "consistent with what is the general justice perspective." The agency agrees that this is the general perspective, as exemplified by the priority of the payment statute for inmate trust accounts, Government Code §501.014(e). In addition, however, the agency believes that the 79th Legislature, in enacting Article 103.0033, was aware from the fiscal note that much of the state revenue from improved collection effort goes to the Compensation to Victims of Crime Fund. The agency will seek legislative clarification whether the prioritization of fines, fees and costs that is implicit in the mandatory collection program was intended to supersede direct victim restitution as a priority. She also commented that the collection rate should include community service. The agency disagrees, but would refer the commenter to make inquiry with the Comptroller for further information on the methodology, and would note that the Comptroller's methodology does include a calculation of a compliance rate, as well as a collection rate. She also commented that information in the application for extension of time to pay could be inappropriate to release publicly, and that for traffic cases the information and documentation process is counterproductive. The agency disagrees to the extent that privacy violations have not been a problem, and disagrees to the extent that the burden of the application process often motivates defendants to pay at the time judgment is imposed.

The agency received comments from the office of the City of Waco Municipal Court Program Administrator that constituted complaints about the sampling methods used by the comptroller and did not pertain to the proposed rule.

The agency received comments from the Texas Fair Defense Project that the rules did not incorporate or mention the constitutional and statutory limitations on collection of unpaid court costs, fines and fees in currency from defendants who are unable to pay. The commenter also noted that §175.4(c)(3)(B) of this chapter as drafted appears to conflict with statutory provisions regarding waiver of costs and fees. The agency agrees with the comments, and amended the rule.

In addition to receiving written comments, the agency convened a meeting to discuss those comments, facilitated by the Center for Public Policy Dispute Resolution. The facilitator's easel notes from that meeting, reproduced below, were also taken into account in adopting revisions to the proposal.

Section 175.1 (along with other sections related to topic)

* Need to take indigency, mental health defendants and disability into consideration

* What does "with the consent of the defendant" mean?

* What about court-ordered?

* May be inconsistencies in the rule

* Most defendants do not consent (a) (b)

* Judge-ordered fines are due now. Time beyond that is a collection effort

* What is a "Payment Plan"

* How is that considered in an audit? Jim [Lehman] responds: Survey

* When is application necessary?

* What about capias pro fine?

* Can be shifted out of program

* Consider who falls under application

* Application information

* Difficult to get

* Time consuming

* Each court is different - one size fits all may not be appropriate

* Specified payment - look at including victim restitution

* "Judgment:" some cases don't have a judgment

* Do not include interlocutory orders (such as probation)

* May need to distinguish between application and collection program

* Need payment terms for court costs

Section 175.2

* Need to define "collection rate" - is it a payment rate?

* Public information?

* Disclosure of information is a concern

* Application info - 2 purposes:

contact

ability

* Application info may vary depending on level of fine

* Consider electronic verification for contact info (issue of proving verification)

* Concern with time limits like 120 days

* Do not have percentage in §175.5(2)(A) or specific time frame with post incarceration

* Instead: are the courts complying with process - with a structured plan with baseline percentage for collection rate

* Audit compliance with structured plan (not numbers)

* Post-incarceration would be handled locally

* Instead "on release" put a date

SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

1 TAC §§175.1 - 175.5

The statutory authority for the adopted rules and the statutory provision affected by the adopted rules is Article 103.0033 of the Code of Criminal Procedure.

§175.1. Source, Purpose and Scope.

(a) The source of this chapter is Article 103.0033 of the Code of Criminal Procedure.

(b) The purpose of this chapter is to provide notice to counties and municipalities of the scope and components of the OCA Collection Improvement Program and of the audit standards that will be used by the Comptroller of Public Accounts to determine program implementation.

(c) The OCA Collection Improvement Program applies to criminal cases in which the defendant agrees to or is required to pay all court costs, fees, and fines under a payment plan rather than when they are assessed and payment is requested. Although the program can be utilized by a judge in virtually every criminal case to effectuate the judge's financial orders, it is not designed to influence the judicial determination of whether to order payment of costs, fees and fines, or otherwise to affect the sentencing or other disposition decision that is within the judge's discretion. The program is simply designed to improve the collection of court costs, fees and fines that have been imposed, while helping defendants satisfy their obligations. The program is not intended to conflict with or undermine the provision to defendants of full procedural and substantive rights under the constitution and laws of this state and of the United States.

(d) Although the program focuses on collection of court costs, fees and fines, it should be implemented in the context of local, state and national efforts to develop and apply systemic policy to the competing financial obligations of people in the criminal justice system.

§175.2. Definitions.

(a) "Assessment date" is the date on which a defendant becomes obligated to pay court costs, fees and fines. When a defendant remits partial payment of a citation without appearing in person, the assessment date is the date the partial payment was received.

(b) "Contact information" means the defendant's home address and home or primary contact telephone number; the defendant's employer's or source of support's name, address and telephone number; at least two personal references, and the date the information is obtained.

(c) "Designated counties" are those with a population of 50,000 or greater.

(d) "Designated municipalities" are those with a population of 100,000 or greater.

(e) "Jurisdiction" means a designated county or designated municipality that is subject to these rules.

(f) "OCA" means the Office of Court Administration of the Texas Judicial System.

(g) "OCA's program" or "OCA's Collection Improvement Program" or "model program" means the model program developed by OCA to improve the collection of court costs, fees and fines imposed in criminal cases through application of best practices.

(h) "Payment ability information" means the defendant's account balances in financial institutions, debt balances and payment amounts, and stated income.

(i) "Payment Plan" means a schedule of payment(s) to be paid by a defendant who does not pay all court costs, fees, and fines at the time they are assessed and payment is requested.

(j) "Program" or "Local Program" means the collection program implemented by a jurisdiction.

§175.3. OCA's Collection Improvement Program Requirements.

(a) OCA Program Requirements. OCA's program has 10 critical components. Three critical components relate to the way a local program should be implemented, staffed, and operated. The other seven critical components relate to the way program staff communicates with defendants and documents those communications. In accordance with Article 103.0033(j), the Comptroller will periodically audit counties and municipalities to confirm implementation of the critical components of OCA's program; the audit standards are more fully described in §175.5 of this chapter.

(b) Critical Components for Local Program Operations.

(1) Dedicated Program Staff. Each local program must designate at least one employee whose job description contains an essential job function of collection activities. The priority collection job function may be concentrated in one individual employee or distributed among two or more employees. The collection function need not require 40 hours per week of an employee's time, but must be a priority.

(2) Payment Plan Compliance Monitoring. Program staff must monitor defendants' compliance with the terms of their payment plans and document the ongoing monitoring by either an updated payment due list or a manual or electronic tickler system.

(3) Proper Reporting. The program shall report its collection activity data to OCA at least annually in a format approved by OCA, as described in §175.4 of this chapter.

(c) Critical Components for Defendant Communications.

(1) Application or Contact Information. For payment plans set by a judge, defendant must provide or acknowledge contact information and program staff must document it. In other cases, defendant must provide a signed or acknowledged application for extended pay-

ment that includes both contact information and payment ability information. Programs may use a single form for both contact information and payment ability information, and the required information must be obtained within 30 days of the assessment date.

(2) Verification of Contact Information. Within five days of receiving the data, program staff must verify both the home or contact phone number and the employer or source of support, if applicable. Verification may be conducted by reviewing written proof of the contact information, by telephoning the contacts, or by using a verification service. Verification must be documented by identifying the person conducting it and the date.

(3) Defendant Interviews. Within 14 days of receiving an application or a judge-imposed payment plan, program staff must conduct an in-person or telephone interview with the defendant either to review the application and determine an appropriate payment plan or to review the terms of the judge-imposed payment plan. Interviews must be documented by indicating the name of the interviewer and date of the interview.

(4) Specified Payment Terms.

(A) Documentation. Payment plans must be documented by notation in the judgment or court order, on a docket sheet, by written or electronic record, or by other means enabling later review.

(B) Payment Guidelines. Payment plans should require the highest payment amounts in the shortest period of time that the defendant can successfully make, considering the amount owed, the defendant's ability to pay, and the defendant's obligations to pay other court-mandated amounts, including child support, victim restitution, and fees for drug testing, rehabilitation programs, or community supervision.

(C) Time Requirements. Payment plans set by program staff shall meet the following time requirements:

(i) In municipal and justice court cases, full payment within 120 days of the assessment date.

(ii) In county and district court cases involving community supervision, full payment at least 60 days before expiration of the term of community supervision.

(iii) In county and district court cases not involving community supervision and not involving incarceration, full payment within 180 days of the assessment date. Time requirements for payment plans set by a judge are within judicial discretion.

(5) Telephone Contact for Past-Due Payments. Within 30 days of a missed payment, a phone call must be made to a defendant who has not contacted the program staff. Phone calls may be made by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

(6) Mail Contact for Past-Due Payments. Within 30 days of a missed payment, a written delinquency notice must be sent to a defendant who has not contacted the program. Written notice may be sent by an automated system, but an electronic report or manual documentation of the mail contact must be available on request.

(7) Contact if Capias Pro Fine Sought. If a capias pro fine will be sought, the program must make another phone call or send another written notice to the defendant within 30 days of the written delinquency notice described in paragraph (6) of this subsection. An electronic report or manual documentation of the contact must be maintained.

§175.4. Content and Form of Local Government Reports.

(a) General Scope. Article 103.0033(i) requires that each program submit a written report to OCA and the Comptroller at least annually that includes updated information regarding the program, with the content and form to be determined by OCA and the Comptroller.

(b) Reporting Format and Account Setup. In cooperation with the Comptroller, OCA has implemented a web-based Online Collection Reporting System for the program participants or jurisdictions to enter information into the system which is accessible by both agencies. For good cause shown by a jurisdiction, OCA may grant a temporary waiver from timely online reporting. Program participants or jurisdictions shall provide OCA with information for the online reporting system to enable OCA to establish the program reporting system account. The information must include the program name, program start date, start-up costs, the type of collection and case management software programs used by the program, the entity to which the program reports (e.g., district clerk's office, sheriff, etc.), the name and title of the person who manages the daily operations of the program, the mail and e-mail addresses and phone and fax numbers of the program, the courts serviced by the program, and contact information for the program staff with access to the system so user identifications and passwords can be assigned.

(c) Content and Timing of Reports.

(1) Annual Reports. By the 20th day of the month following the anniversary of program implementation, each program or jurisdiction shall report the following information:

(A) Number of full-time and part-time collection program employees;

(B) Total program budget;

(C) Salary budget for the program;

(D) Dollar amount of fringe benefits for the program;

(E) Areas other than court collections for which the program provides services; and

(F) A compilation of 12 months of the monthly reporting information described in paragraph (3) of this subsection, if not reported each month as requested.

(2) Additional information may be requested in the annual reports on a voluntary basis.

(3) Monthly Reports. By the 20th day of the following month, each program or jurisdiction is requested to provide the following information regarding the previous month's program activities:

(A) Number of cases in which court costs, fees, and fines were assessed;

(B) For assessed court costs and fees: the dollar amount assessed and collected; the dollar amount of credit given for jail time served; the dollar amount of credit given for community service performed; the dollar amount waived because of indigent status, and the dollar amount waived for reasons other than indigency;

(C) For fines: the dollar amount assessed, collected, or waived; the dollar amount of credit given for jail time served; and the dollar amount of credit given for community service performed; and

(D) Aging information consisting of the time span from date of assessment through the date of payment, in 30-day increments up to 120 days, and for more than 120 days.

§175.5. Audit Standards.

(a) Compliance Audits. In accordance with Article 103.0033(j), the comptroller shall periodically audit jurisdictions

to confirm compliance with the critical components described in §175.3(b) and (c) of this chapter.

(b) Compliance Audit Methods. The comptroller shall use random selection to generate an adequate sample of cases to be audited, and shall use the same sampling methodology as used for programs with similar automation capabilities.

(c) Compliance Audit Standards. The comptroller shall use the following standards in the compliance audit:

(1) A county has met the requirements of §175.3(b) of this chapter when either 90 percent of all courts in the county, or all courts in the county except one court, have satisfied all three requirements. Partial percentages are rounded in favor of the county. A municipality must satisfy all three requirements of §175.3(b) of this chapter.

(2) To be in substantial compliance with a critical component of §175.3(c) of this chapter, the requirement must be met for at least 80% of the cases at that stage of collection. To be in partial compliance with a critical component of §175.3(c) of this chapter, the requirement must be met for at least 50% of the cases at that stage of collection. For the comptroller to find a jurisdiction in compliance with the requirements of §175.3(c) of this chapter, the jurisdiction cannot be in less than partial compliance with any critical component, may be in partial compliance with a maximum of one critical component, and shall be in substantial compliance with all of the other applicable critical components.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2007.

TRD-200705949
Margaret Bennett
General Counsel for Office of Court Administration
Texas Judicial Council
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Proposal publication date: August 31, 2007
For further information, please call: (512) 936-6994

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SUBCHAPTER B. IMPLEMENTATION SCHEDULE AND WAIVERS

1 TAC §175.6, §175.7

The statutory authority for the adopted rules and the statutory provision affected by the adopted rules is Article 103.0033 of the Code of Criminal Procedure.

§175.6. Implementation Schedule.

In consultation with the Comptroller, OCA has developed and published on its website a prioritized implementation schedule for jurisdictions.

§175.7. Waivers.

(a) Statutory Basis. Article 103.0033 provides that OCA may determine that it is not cost-effective to implement a program in a county or municipality and grant a waiver to the requesting entity.

(b) Criteria for granting waivers. OCA will grant a blanket waiver from implementation when the requesting entity demonstrates that:

(1) the estimated costs of implementing the program are greater than the estimated additional revenue that would be generated by implementing the program; and

(2) a compelling reason exists for submitting the waiver request after the entity's published implementation deadline. The requesting entity and OCA program staff each shall submit documentation supporting their cost and revenue projections to the administrative director for determination.

(c) Temporary waivers. OCA will consider a request to grant a temporary waiver for good cause that could not have been reasonably anticipated. Such temporary waivers may be granted after an audit to allow a program to correct deficiencies discovered during the audit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Margaret Bennett
General Counsel for Office of Court Administration
Texas Judicial Council
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For further information, please call: (512) 936-6994

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 379. FAMILY VIOLENCE PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts the repeal and replacement of Subchapter A, §379.1, concerning Definitions for programs serving adult victims (and their children) of family violence, without changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3779) and will not be republished.

This repeal and replacement will affect contracting, fiscal, board, facility, service delivery, and program administration issues related to providing shelter, nonresidential and special project services.

HHSC has the responsibility of administering the Family Violence Program ("Program"). As part of its review of the Program rules, HHSC determined that a change in format should be made to Chapter 379 (relating to the Family Violence Program). HHSC determined that converting from a question and answer format to a narrative format would assist users of the rules in finding information more readily. In addition, HHSC believed simplifying the rule structure would help clarify the meaning of the rules. Although no substantive changes were made to any of the subchapters, HHSC opted to repeal the current rules with the question and answer format and replace them with proposed new rules in the narrative format. The repeal and replacement of Chapter 379, Subchapters B, C, and D are contemporaneously adopted elsewhere in this issue of the *Texas Register*.

Subchapter A establishes definitions to clarify rules and issues related to contracting, fiscal, personnel, facility, board, service

delivery, and program administration. With the exception of adding one new definition, §379.1(26) (relating to Dating Violence), HHSC made no substantive changes to the rules. The addition of this definition is intended to correspond with the addition of the definition of that term in §71.0021, Texas Family Code, (relating to Dating Violence). HHSC proposes to repeal Subchapter A, Definitions, and replace it with new Subchapter A.

Stakeholder input on proposed changes was previously obtained from entities affected by the rule changes and from the Texas Council on Family Violence, the state coalition on domestic violence.

Comments

The 30-day comment period ended July 22, 2007. During this period, HHSC received one comment from an external stakeholder, with Texas Society for Clinical Social Work. HHSC did not make any changes pursuant to the comment.

A summary of the comment and HHSC's response follows:

Comment: We are in support of the proposal to repeal Subchapter A and incorporate most of the context into the new Subchapter A and to add one new definition "dating violence" §71.0021, Texas Family Code, (relating to Dating Violence). Thank you for your efforts on behalf of the victims of family violence in Texas.

HHSC Response: The FVP appreciates the positive response regarding Subchapter A and believes the inclusion of a definition on dating violence will improve services to victims across Texas.

SUBCHAPTER A. DEFINITIONS

1 TAC §379.1

The repeal is adopted under the Texas Government Code, §531.033, which provides the Executive commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706007
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 23, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 424-6900

♦ ♦ ♦

1 TAC §379.1

The new section is adopted under the Texas Government Code, §531.033, which provides the Executive commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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SUBCHAPTER B. SHELTER CENTERS

The Texas Health and Human Services Commission (HHSC) adopts the repeal and replacement of Subchapter B, Shelter Centers. Specifically, HHSC adopts the repeal of Division 1, Board of Directors, §§379.101 - 379.110 and new §§379.101 - 379.104; the repeal of Division 2, Contract Standards, §§379.201 - 379.224 and new §§379.201 - 379.207; the repeal of Division 3, Fiscal Management, §§379.301 - 379.316 and new §379.301 and §379.302; the repeal of Division 4, Personnel, §§379.401 - 379.418 and new §§379.401 - 379.407; the repeal of Division 5, Facility, Safety, and Health Requirements, §§379.501 - 379.512 and new §§379.501 - 379.510; the repeal of Division 6, Program Administration, §§379.601 - 379.642, 379.650, 379.651 and new §§379.601 - 379.633; the repeal of Division 7, Service Delivery, §§379.701 - 379.726 and new §§379.701 - 379.719, without changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3782) and will not be republished. Sections 379.634 and 379.635 are adopted with changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3782). The text of those adopted rules will be republished.

HHSC has the responsibility of administering the Family Violence Program ("Program"). As part of its review of the Program rules, HHSC determined that a change in format should be made to Chapter 379 (relating to the Family Violence Program). HHSC determined that converting from a question and answer format to a narrative format would assist users of the rules in finding information more readily. In addition, HHSC believed simplifying the rule structure would help clarify the meaning of the rules. Although no substantive changes were made to any of the subchapters, HHSC opted to repeal the current rules with the question and answer format and replace them with proposed new rules in the narrative format. The repeal and replacement of Chapter 379, Subchapters A, C, and D are contemporaneously adopted elsewhere in this issue of the *Texas Register*.

Subchapter B defines contracting, fiscal, personnel, facility, board, service delivery, and program administration rules specific to programs who provide shelter services to victims of family violence. Most of the requirements of current Subchapter B have been incorporated into the Family Violence Shelter contract.

Section 379.207 was repealed and new language was added to Sections §379.203 (relating to Satellite Shelter Requirements) and §379.205 (relating to Funding Waivers) to address new satellite shelter requirements.

Sections 379.505 and 379.508 have been repealed and the language in those sections has been incorporated into adopted §379.503 (relating to satellite shelter Security Systems).

The language in §379.725 and §379.726 has been incorporated into adopted §379.612 (relating to Termination of Services).

Two new rules, §379.702 and §379.703 have been added to clarify data collection procedures.

Finally, HHSC has made minor clarifications throughout Subchapter B. HHSC proposes to repeal Subchapter B, Shelter Centers and replace it with new Subchapter B.

Stakeholder input has been obtained from Commission-funded programs and from the Texas Council on Family Violence (TCFV), the state coalition on domestic violence.

Comments

The 30-day comment period ended July 22, 2007. During this period, HHSC received five comments from one HHSC contractor, of the Panhandle Crisis Center, Inc. One comment resulted in minor clarifying language that was added to two of the proposed rules. All of the other concerns raised were comments about existing rules, not proposed rule changes. HHSC will only respond to comments regarding rule changes, but will archive and revisit those rules during the next rule revision process.

A summary of the comments and HHSC's responses follow:

Comment: *§379.203 Satellite Shelter Requirements, (1) Have a freestanding shelter building in which residents are sheltered.*

If a program opted to offer a satellite shelter in another county and wanted to also operate its nonresidential outreach program from the same building for cost-efficiency, this rule appears to forbid that. It would make more sense to revise this rule to remove "freestanding" and then add wording to section (4) "Provide the same services as a 24-hour-a-day shelter;" to say that a satellite should the provide same services AND meet the "same facility requirements and types of facilities" for a 24-hour-a-day shelter.

HHSC Response: HHSC appreciates the comment on the existing rule; however, as the comment does not apply to the proposed rule changes, HHSC cannot amend this rule. To do so would violate HHSC's obligation to provide adequate public notice. No change was made based on this comment.

Comment: *§379.620 Release of Resident or Nonresident Information, (a) The center may release information, orally or in writing, only if it first obtains a written release of information from the resident or nonresident.*

Victims often need immediate advocacy and sometimes it is not possible to obtain written releases, especially in rural service areas encompassing multiple counties. If the rule stands, programs must require a victim make these arrangements, taking time away from her ability to gather important documents or other items needed. When a victim is requesting and verbally authorizing immediate, needed assistance, it seems inappropriate that a shelter center would be cited for a rule violation in its effort to provide a service the client requests. An exception to the rule should be added to clarify that Centers may develop a policy authorizing release of information at the verbal request of victims.

HHSC Response: HHSC appreciates the comment on the existing rule; however, as the comment does not apply to the proposed rule changes, HHSC cannot amend this rule. To do so would violate HHSC's obligation to provide adequate public notice. No change was made based on this comment.

Comment: *§379.621 Release of Resident or Nonresident Information Document. The release of information document must include the: (1) name of no more than one person or organization to which the information is being released;*

This requires an unnecessary amount of paperwork for victims to read and sign. It would be much more appropriate for victims and cost-efficient for service providers if the rule allowed for victims to consent to multiple organizations on a release when appropriate for a single advocacy or referral purpose. Programs could be required to have an area on the release where victims could specify any exclusions or exceptions needed for purposes of safety.

HHSC Response: HHSC appreciates the comment on the existing rule; however, as the comment does not apply to the proposed rule changes, HHSC cannot amend this rule. To do so would violate HHSC's obligation to provide adequate public notice. No change was made based on this comment.

Comment: *§379.634 Content of Training for Direct Service Volunteers.*

I could not find a definition of direct service within the definitions listed in the proposed rules, but the current definition in the family violence handbook is "379.1(7) Direct service - A face to face DHS contracted service provided by an employee or volunteer of the family violence center or special nonresidential project or by a DHS-approved subcontractor." If a program wanted to recruit volunteers solely for the purpose of non-emergency transportation of shelter clients or nonresidents to and from employment, church, or social/recreational activities, it seems reasonable to require limited training as outlined in *§379.635. Content of Training for Non-Direct Service Volunteers.* Under the current rules, I think this would be prohibited because non-emergency transportation is a direct service. I believe HHSC should revise this rule to allow programs to determine non-emergency services in which volunteers may be able to assist.

HHSC Response:

Concern regarding training requirements for transportation volunteers: HHSC appreciates the comment on the existing rule; however, as the comment does not apply to the proposed rule changes, HHSC cannot amend this rule. To do so would violate HHSC's obligation to provide adequate public notice. No change was made based on this comment.

Concern about the definition of direct service: HHSC acknowledges the comment and agrees to delete the term direct service in the rules.

Background: There is no longer a definition of direct service in the proposed rule changes due to a recommendation from the stakeholder committee that this definition seemed repetitive and unnecessary since all of the service definitions stated that they were referring to face-to-face services (except hotline).

In order to address the concern that there was no definition of what a direct service is in terms of the volunteer training, HHSC agrees to change language in the two rules concerning training of volunteers.

Comment: *§379.632 Volunteer Program*

Section (2) requires offering training for volunteers at least twice a year. It does not specify if this is only for direct service volunteers or if all volunteers (including board members, resale shop workers, administrative office volunteers, etc.) must have training at least twice per year. My recommendation is that this be clarified to include only direct service volunteers.

HHSC Response: HHSC acknowledges the response but disagrees with the recommendation to include only direct service providers. The new rule gives decision making authority to the

individual programs on which volunteers the program may train, and when. Under the new language, programs can decide that it will conduct one training per year for volunteers not working with victims and then conduct training for volunteers providing services to victims.

DIVISION 1. BOARD OF DIRECTORS

1 TAC §§379.101 - 379.110

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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1 TAC §§379.101 - 379.104

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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DIVISION 2. CONTRACT STANDARDS

1 TAC §§379.201 - 379.224

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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1 TAC §§379.201 - 379.207

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DIVISION 3. FISCAL MANAGEMENT

1 TAC §§379.301 - 379.316

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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1 TAC §379.301, §379.302

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DIVISION 4. PERSONNEL

1 TAC §§379.401 - 379.418

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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1 TAC §§379.401 - 379.407

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

1 TAC §§379.501 - 379.512

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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1 TAC §§379.501 - 379.510

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.601 - 379.642, 379.650, 379.651

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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1 TAC §§379.601 - 379.635

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

§379.634. Content of Training for Direct Service Volunteers.
Content of training for volunteers providing services to residents, nonresidents or other victims of family violence. The center must develop training for volunteers providing services to residents, nonresidents or other victims of family violence that includes, but is not limited to:

(1) A brief history of the Texas Battered Women's Movement;

(2) The need for and benefit of shelter services;

(3) The dynamics of family violence;

(4) A brief summary of current Texas laws that address family violence issues;

(5) Crisis intervention;

(6) Hotline skills, if applicable;

(7) Peer counseling techniques;

(8) Risk assessment and safety planning;

(9) The center policies and procedures;

(10) The organization's mission and philosophy;

(11) Confidentiality;

(12) Legal options for victims of family violence;

(13) Sensitivity to cultural diversity;

(14) Community resources;

(15) The need for community systems to be responsive to the needs of victims of family violence; and

(16) Training on applicable civil rights laws and regulations.

§379.635. Content of Training for Non-Direct Service Volunteers.
Content of training for volunteers not providing services to residents, nonresidents or other victims of family violence. The center must provide volunteers not providing services to residents, nonresidents or other victims of family violence with:

(1) a basic orientation of the duties they perform; and

(2) at a minimum, basic information about the organization's mission, philosophy, and policies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.701 - 379.726

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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1 TAC §§379.701 - 379.719

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECTS

The Texas Health and Human Services Commission (HHSC) adopts the repeal and replacement of Subchapter C, Special Nonresidential Projects. Specifically, HHSC adopts the repeal of Division 1, Board of Directors, §§379.801 - 379.804 and new §§379.801 - 379.803; the repeal of Division 2, Contract Standards, §§379.901 - 379.917 and new §§379.901 - 379.903; the repeal of Division 3, Fiscal Management §§379.1001 - 379.1015 and new §379.1001 and §379.1002; the repeal of Division 4, Personnel, §§379.1101 - 379.1108 and new §§379.1101 - 379.1103; the repeal of Division 5, Facility, Safety, and Health Requirements, §§379.1201 - 379.1209 and new §379.1201 and §379.1202; the repeal of Division 6, Program Administration, §§379.1301 - 379.1326 and new §§379.1301 - 379.1321; the repeal of Division 7, Service Delivery, §§379.1401 - 379.1410

and new §§379.1401 - 379.1408, without changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3798) and will not be republished.

HHSC has the responsibility of administering the Family Violence Program ("Program"). As part of its review of the Program rules, HHSC determined that a change in format should be made to Chapter 379 (relating to the Family Violence Program). HHSC determined that converting from a question and answer format to a narrative format would assist users of the rules in finding information more readily. In addition, HHSC believed simplifying the rule structure would help clarify the meaning of the rules. Although no substantive changes were made to any of the subchapters, HHSC opted to repeal the current rules with the question and answer format and replace them with proposed new rules in the narrative format. The repeal and replacement of Chapter 379, Subchapters A, B, and D are contemporaneously adopted elsewhere in this issue of the *Texas Register*.

Subchapter C defines contracting, fiscal, personnel, facility, board, service delivery, and program administration rules specific to programs who provide special nonresidential services to victims of family violence. With the following exceptions, HHSC made no substantive changes to the rules. The language in §379.1409 and §379.1410 has been incorporated into adopted §379.1303 (relating to Termination of Services). One new rule, §379.1402, has been added to clarify data collection procedures. HHSC has also made minor clarifications throughout Subchapter C. HHSC adopts the repeal of Subchapter C, Special Nonresidential Projects and replace it with new Subchapter C.

Stakeholder input was previously obtained from Commission-funded programs and from the Texas Council on Family Violence (TCFV), the state coalition on domestic violence.

The 30-day comment period ended July 22, 2007. HHSC did not receive any comments regarding the proposed rules during the comment period.

DIVISION 1. BOARD OF DIRECTORS

1 TAC §§379.801 - 379.804

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
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1 TAC §§379.801 - 379.803

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. CONTRACT STANDARDS

1 TAC §§379.901 - 379.917

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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1 TAC §§379.901 - 379.903

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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DIVISION 3. FISCAL MANAGEMENT

1 TAC §§379.1001 - 379.1015

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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1 TAC §379.1001, §379.1002

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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DIVISION 4. PERSONNEL

1 TAC §§379.1101 - 379.1108

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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1 TAC §§379.1101 - 379.1103

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

1 TAC §§379.1201 - 379.1209

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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1 TAC §379.1201, §379.1202

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.1301 - 379.1326

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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1 TAC §§379.1301 - 379.1321

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.1401 - 379.1410

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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1 TAC §§379.1401 - 379.1408

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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SUBCHAPTER D. NONRESIDENTIAL CENTERS

The Texas Health and Human Services Commission (HHSC) adopts the repeal and replacement of Subchapter D, Nonresidential Centers. Specifically, HHSC adopts the repeal of Division 1, Board of Directors, §§379.1501 - 379.1510 and new §§379.1501 - 379.1504; the repeal of Division 2, Contract Standards, §§379.1601 - 379.1622 and new §§379.1601 - 379.1606; the repeal of Division 3, Fiscal Management §§379.1701 - 379.1716 and new §379.1701 and §379.1702; the repeal of Division 4, Personnel, §§379.1801 - 379.1818 and new §§379.1801 - 379.1806; the repeal of Division 5, Facility, Safety, and Health Requirements, §§379.1901 - 379.1909 and new §§379.1901 - 379.1903; the repeal of Division 6, Program Administration, §§379.2001 - 379.2037 and new §§379.2001 - 379.2031; the repeal of Division 7, Service Delivery, §§379.2101 - 379.2121 and new §§379.2101 - 379.2113, without changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3808) and will not be republished. The Texas Health and Human Services Commission adopts new §379.2032 and §379.2033, with two minor changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3816). The text of the rules will be republished.

HHSC has the responsibility of administering the Family Violence Program ("Program"). As part of its review of the Program rules, HHSC determined that a change in format should be made to Chapter 379 (relating to the Family Violence Program). HHSC determined that converting from a question and answer format to a narrative format would assist users of the rules in finding information more readily. In addition, HHSC believed simplifying the rule structure would help clarify the meaning of the rules. Although no substantive changes were made to any of the subchapters, HHSC opted to repeal the current rules with the question and answer format and replace them with proposed new rules in the narrative format. The repeal and replacement of Chapter 379, Subchapters A, B and C are contemporaneously adopted elsewhere in this issue of the *Texas Register*.

Subchapter D defines contracting, fiscal, personnel, facility, board, service delivery, and program administration rules specific to programs who provide nonresidential services to victims of family violence. With the following exceptions, HHSC made no substantive changes to the rules. Most of the requirements of current Subchapter D have been incorporated into the Family Violence Nonresidential contract. The language in §379.725 and §379.726 has been incorporated into adopted §379.2010 and §379.2101 (relating to Termination of Services). One new rule, §379.2102, has been added to clarify data collection procedures. In addition, HHSC has made minor clarifications throughout Subchapter D. HHSC adopts the repeal of Subchapter D, Nonresidential Centers and replaces it with new Subchapter D.

The 30-day comment period ended July 22, 2007. HHSC did not receive any comments regarding the proposed rules during the comment period. HHSC had previously received stakeholder input from Commission-funded programs and from the Texas Council on Family Violence (TCFV), the state coalition on domestic violence. HHSC has, however, made minor clarifying language changes to the published text of two proposed rules, §379.2032 and §379.2033, in order to remain consistent with corresponding rules (§379.634 and §379.635) in Subchapter B.

DIVISION 1. BOARD OF DIRECTORS

1 TAC §§379.1501 - 379.1510

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706037
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 23, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 424-6900

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1 TAC §§379.1501 - 379.1504

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
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Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 2. CONTRACT STANDARDS

1 TAC §§379.1601 - 379.1622

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §§379.1601 - 379.1606

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
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Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 3. FISCAL MANAGEMENT

1 TAC §§379.1701 - 379.1716

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
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For further information, please call: (512) 424-6900

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1 TAC §379.1701, §379.1702

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
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Texas Health and Human Services Commission
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Proposal publication date: June 22, 2007
For further information, please call: (512) 424-6900

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DIVISION 4. PERSONNEL

1 TAC §§379.1801 - 379.1818

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
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Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §§379.1801 - 379.1806

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 23, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 424-6900

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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

1 TAC §§379.1901 - 379.1909

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
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For further information, please call: (512) 424-6900

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1 TAC §§379.1901 - 379.1903

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706046
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.2001 - 379.2037

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706047
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 23, 2007
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For further information, please call: (512) 424-6900

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1 TAC §§379.2001 - 379.2033

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

§379.2032. Content of Training for Volunteers Providing Services to Program Participants or Other Victims of Family Violence.

The center must develop training for direct service volunteers that includes, but is not limited to:

(1) a brief history of the Battered Women's Movement;

(2) the need for and benefit of shelter services;

(3) the dynamics of family violence;

(4) a brief summary of current Texas laws that address family violence issues;

(5) crisis intervention;

(6) hotline skills, if applicable;

(7) peer counseling techniques;

(8) risk assessment and safety planning;

(9) center policies and procedures;

(10) the organization's mission and philosophy;

(11) confidentiality;

(12) legal options for victims of family violence;

(13) community resources;

(14) sensitivity to cultural diversity; and

(15) the need for community systems to be responsive to the needs of victims of family violence.

§379.2033. Content of Training for Volunteers Not Providing Services to Program Participants or Other Victims of Family Violence.

The center must provide non-direct service volunteers with:

(1) a basic orientation of the duties they perform; and

(2) at a minimum, basic information about the organization's mission, philosophy, and policies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706048
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 23, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 424-6900

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.2101 - 379.2121

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706049
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 23, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 424-6900

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1 TAC §§379.2101 - 379.2113

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706050
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 23, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.210

The Texas Department of Agriculture (the department) adopts new Chapter 1, Subchapter E, §1.210, concerning the Healthy Students = Healthy Families Advisory Committee, without changes to the proposed text as published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4617).

New §1.210 adds the Healthy Students = Healthy Families Advisory Committee to the list of the department's advisory committees. The advisory committee will make recommendations to the department and the Commissioner about the Texas Public School Nutrition Policy and nutrition issues affecting Texas children. The committee also will advise the Commissioner on ways to increase participation in school lunch and breakfast programs, ways to coordinate nutrition education and physical fitness components in the overall school nutrition environment, and ways to improve communication among food and service companies, schools, parents, students and Texas Department of Agriculture's Food and Nutrition Division.

No comments were received on the proposal.

New §1.210 is adopted under the Texas Government Code, §2110.005, which requires that an agency that establishes an advisory committee adopt rules setting forth the composition, purpose, duration and duties of the committee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200706006
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: December 20, 2007
Proposal publication date: July 27, 2007
For further information, please call: (512) 463-4075

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.12

The Texas Animal Health Commission adopts amendments to Chapter 59, entitled General Practices and Procedures by adding new §59.12, concerning Carcass Disposal Requirements, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6928) and will not be republished.

In oral discussion with staff from the Texas Commission on Environmental Quality (TCEQ) three issues were identified for our consideration. The first issue was that in the rule under §59.12(e)(8) that allowing for disposal by decomposition is not specifically addressed under TCEQ rules. Our understanding was that TCEQ rules for disposal of animal carcasses does not explicitly authorize nor prohibit disposal by decomposition. In response the Commission would note that the rule provides for the fact that disposal of the animal carcass must not be in violation of another legal requirement and the current rule is only indicating options and it not a directive to employ that method. As a practical matter there may need to be an opportunity afforded such a directive based on location of the carcass.

The second item discusses was regarding whether this rule applied only to carcasses of diseased animals, or whether it could also include deaths caused by natural disasters such as flooding, fires, tornados, etc. The amendments to the Commission's statutory authority was specifically focused on disposal of diseased livestock and as such was not specifically applicable for deaths due to natural disaster.

The third issue was in regards to our failure in the rule to mention or specifically reference the deed recordation requirements of TCEQ. TAHC does not have authority to enforce TCEQ regulations, however, the rule contains language to clarify that persons have to abide by all applicable state laws and rules, The carcass disposal rules provide options that may be available for disposal of carcasses from diseased animals.

Under HB 2543 the Commission was authorized to determine and implement the most effective method, including methods other than burning or burial, for disposing of diseased livestock carcasses. The legislation allows the Commission to consider factors such as the most appropriate disposal method for the particular disease, environmental implications, geographic location, number of carcasses, and weather conditions when deciding what method of carcass disposal to employ. Also the legislation authorized the Commission to delegate carcass disposal authority to the Executive Director, by rule.

The Commission received no comments and there are no changes made and therefore the rule will not be republished.

This new section has the following subsections:

Subsection (a) is entitled "Definitions" and provides definitions for terms used in this chapter.

Subsection (b) is entitled "Carcass Disposal" and provides that dead animals carcasses be disposed in the manner required by the commission under this section.

Subsection (c) is entitled "Executive Director Authorization" and authorizes the Executive Director to issue Orders regarding the disposal of carcasses of animals as necessary to eradicate or control the disease as well as to publish directives, guidelines and standards to be followed for carcass disposal in general events involving a diseased animal.

Subsection (d) is entitled "Disposal of Diseased Carcass" and provides that a person who is the owner or caretaker of an animal if ordered by the executive director, shall dispose of the carcasses under the direction of authorized agents of the commission and in accordance with all appropriate legal standards and requirements.

Subsection (e) is entitled "Disposal Methods Determined by the Executive Director" and provides that the Executive Director may determine the appropriate method of disposal for animals that die of infectious or contagious diseases or agents or any other high consequence disease. The rule provides for rendering, burial, disposal in an approved sanitary landfill, composting, digestion, incineration, burning, decomposition. This subsection also provides a provision for the Executive Director to grant variances from the requirements on a case-by-case basis.

Subsection (f) is entitled "Dead Animal Emergencies" and provides for dead animal emergencies which require extraordinary disposal measures.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

House Bill 2543 of the 80th Legislative Regular Session reauthorized the agency for another twelve years. During the process a number of amendments were made to Chapter 161 of the Texas Agriculture Code. Section 161.004 was amended regarding carcass disposal. Section 161.004 provides that" {a} person who is the owner or caretaker of livestock, exotic livestock, domestic fowl, or exotic fowl that die from a disease listed in §161.041 (of this code), or who owns or controls the land on which the livestock, exotic livestock, domestic fowl, or exotic fowl die or on which the carcasses are found, shall dispose of the carcasses in the manner required by the commission under this section."

The statute also provides the commission the authority to "determine the most effective methods of disposing of diseased carcasses, including methods other than burning or burial; and by rule prescribe the method or methods that a person may use to dispose of a carcass." "Furthermore the section provides that the commission by rule may delegate its authority under this section to the executive director."

The Commission is vested by statute, §161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Section 161.061 provides that if the Commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. Section 161.101 provides that the Commission may require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of specific diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl. No other statutes, articles, or codes are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2007.

TRD-200705936
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: December 19, 2007
Proposal publication date: October 5, 2007
For further information, please call: (512) 719-0714

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING PHYSICAL FITNESS

19 TAC §103.1001

The Texas Education Agency (TEA) adopts new §103.1001, concerning student physical fitness assessment. The new section is adopted without changes to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6236) and will not be republished. The adopted new section

adopts in rule the requirement that school districts and open-enrollment charter schools shall assess student physical fitness. The adoption implements rule action required by Senate Bill (SB) 530, 80th Texas Legislature, 2007.

Through SB 530, the 80th Texas Legislature added the Texas Education Code (TEC), Chapter 38, Health and Safety, Subchapter C, Physical Fitness Assessment, requiring school districts to annually assess the physical fitness of students enrolled in Grades 3-12. TEC, §38.102, requires the commissioner of education to adopt an assessment instrument to be used by school districts in assessing student physical fitness. The statute also identifies specific factors the instrument must assess and requires criterion-referenced standards specific to a student's age and gender based on the physical fitness level required for good health.

Adopted new 19 TAC Chapter 103, Subchapter AA, §103.1001, implements the TEC, §38.102, by adopting a rule that specifies that the commissioner of education shall determine the assessment instrument to be used by school districts and open-enrollment charter schools to assess the physical fitness of students. The adopted new rule also addresses exemptions.

The public comment period on the proposal began September 14, 2007, and ended October 14, 2007. Following is a summary of public comments received and corresponding agency responses regarding the proposed new 19 TAC Chapter 103, Health and Safety, Subchapter AA, Commissioner's Rules Concerning Physical Fitness, §103.1001, Student Physical Fitness Assessment.

Comment. The Amarillo Independent School District asked what a district should do if a student or student's parent(s) refused the physical fitness assessment.

Agency Response. The agency offers the following clarification. There is no provision in the law for the state to provide a waiver. Local education agencies may make reasonable and equitable accommodations for students, whenever appropriate, in accordance with district policies. The TEA will not penalize districts for following local policy regarding such matters.

Comment. A physical education teacher recommended that the agency adopt the President's Challenge Physical Activity and Fitness Program, the fitness assessment instrument used by the teacher's campus.

Agency Response. The agency disagrees. FITNESSGRAM® / ACTIVITYGRAM® is the assessment instrument each school district and open-enrollment charter school shall use to assess student physical fitness. FITNESSGRAM® / ACTIVITYGRAM® was selected by the commissioner of education through a request for offers process.

The new section is adopted under the Texas Education Code, §38.102, which authorizes the commissioner to adopt by rule an assessment instrument to be used by a school district in assessing student physical fitness. Texas Education Code, §38.106, authorizes the commissioner to adopt rules necessary to implement the Texas Education Code, Chapter 38, Subchapter C.

The new section implements the Texas Education Code, §38.102 and §38.106.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 28, 2007.

TRD-200705934
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 18, 2007
Proposal publication date: September 14, 2007
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 169. ZOONOSIS CONTROL

SUBCHAPTER A. RABIES CONTROL AND ERADICATION

25 TAC §§169.21 - 169.34

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§169.21 - 169.34, concerning the control of rabies. The amendments to §169.22, §§169.26 - 169.30, and §169.32 are adopted with changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5641). The amendments to §169.21, §§169.23 - 169.25, §169.31, §169.33, and §169.34 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Health and Safety Code, Chapter 826, "Rabies," §826.011, which provides the Executive Commissioner of the Health and Human Services Commission with the authority to administer the rabies control program and adopt rules necessary to effectively administer the program.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 169.21 - 169.34 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §169.21 modifies the language to make it more concise.

The amendment to §169.22 updates the definitions and the legacy agency name.

The amendment to §169.23 changes Zoonosis Control Division to Zoonosis Control Branch.

The amendment to §169.24 clarifies preexposure rabies vaccination.

The amendment to §169.25 clarifies potential rabies exposure.

The amendment to §169.26 updates the legacy agency name, clarifies facility and animal care requirements, and deletes the last paragraph because the date by which compliance was required has passed.

The amendment to §169.27 clarifies language relating to rabies exposure and animal quarantine and disposition.

The amendment to §169.28 clarifies and updates language relating to the requirements of quarantine facilities.

The amendment to §169.29 clarifies the rabies vaccination requirement.

The amendment to §169.30 clarifies language pertaining to disposition of domestic animals exposed to rabies.

The amendments to §169.31 and §169.32 clarify language pertaining to dogs and cats coming into Texas from other states and other countries.

The amendment to §169.33 updates the legacy agency name, and clarifies language pertaining to the submission of rabies specimens for laboratory examination.

The amendment to §169.34 replaces the board with the Executive Commissioner of the Health and Human Services Commission.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: the City of Grand Prairie, Bryan Animal Control, Poodle Rescue of North Texas, Harris County Public Health and Environmental Services, Matagorda County Society for the Prevention of Cruelty to Animals, and Dripping Springs Animal Hospital. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Two individuals were in favor of the rules in their entirety.

Comment: Concerning §169.22, one commenter suggested that a definition of what constitutes a rabies exposure be added to the rules.

Response: The commission disagrees because it would be impossible to address every combination of variables that may impact a rabies exposure determination. Therefore, flexibility in evaluating each scenario during a rabies case investigation is warranted. However, because the use of the term "potential" when addressing rabies exposure scenarios may be deemed too broad, a new definition for "Potential Exposure" was added to §169.22(22) to clarify the intent of this term.

Comment: Concerning §169.22(3), one commenter requested that the term *Felis catus* be retained that was deleted in the proposed definition of "Cat."

Response: The commission disagrees because it diligently sought opinion on this definition from experts in the field, including veterinarians and wildlife biologists at the department and the United States Department of Agriculture - Animal and Plant Health Inspection Service (USDA -APHIS). Due to inconsistencies that currently exist with scientific nomenclature, there was consistent agreement from these experts that the definition in the proposed language be utilized. No change was made as a result of this comment.

Comment: Concerning §169.22(3), one commenter expressed that specifically excluding hybrids in the proposed rules would give owners of cat hybrids an increased reason for avoiding rabies vaccination.

Response: The commission disagrees because there is no approved vaccination for hybrids. The rules do not prohibit veterinarians, at their discretion, from administering rabies vaccine to species for which no licensed vaccine is available (off-label use). If these animals were vaccinated through off-label use of vaccine, they would not qualify as being "currently vaccinated" by definition; however, from a public health stance, they may be protected against rabies. No change was made as a result of this comment.

Comment: Concerning §169.22(5)(C), one commenter would like to see the language "and local health regulations" included.

Response: The commission disagrees because the definition for "currently vaccinated" has a medical basis in order to address concerns of possible rabies exposures. This term also needs to have consistent usage by the state during investigations of rabies cases. Variations in local regulations should not be a factor. No change was made as a result of this comment.

Comment: Concerning §169.22(6), one commenter recommended that an element of time be added to the definition of custodian, as it is unrealistic to expect a person to be responsible for a stray, unowned cat that eats cat food on his property on one occasion.

Response: The commission disagrees with the comment. Enforcement based upon unverifiable time lines is impractical. No change was made as a result of this comment.

Comment: Concerning §169.22(8), one commenter requested that the scientific taxonomic classification *Canis lupus familiaris* be utilized in the definition of "Dog."

Response: The commission disagrees because it diligently sought opinion on this definition from experts in the field, including veterinarians and wildlife biologists at the department and USDA - APHIS. Due to inconsistencies that currently exist with scientific nomenclature, there was consistent agreement from these experts that the definition in the proposed language be utilized. No change was made as a result of this comment.

Comment: Concerning §169.22(8), one commenter felt that by excluding hybrids from the definition of "Dog," it makes rabies vaccination of these animals elective.

Response: The commission disagrees. Rabies vaccination of hybrids is elective because there is no approved vaccination for hybrids. The rules do not prohibit veterinarians, at their discretion, from administering rabies vaccine to species for which no licensed vaccine is available (off-label use). If these animals were vaccinated through off-label use of vaccine, they would not qualify as being "currently vaccinated" by definition; however, from a public health stance, they may be protected against rabies. No change was made as a result of this comment.

Comment: Concerning §169.22(20), one commenter asked how an observation period differs from a quarantine period and where and how the 30-day observation period was determined.

Response: The commission responds that the quarantine period is the time frame during the observation period in which the animal is under actual physical confinement. The reason for observation is the fact that rabies virus may be in saliva for a period of time prior to the onset of clinical signs of rabies in the animal.

If the animal being observed is free of clinical signs of rabies at the end of the observation period, there was no human rabies exposure. Guidance from the Centers for Disease Control and Prevention is that the animals subject to a 30-day observation period according to this rule may have rabies virus present in the saliva up to 2 weeks prior to the onset of clinical signs. To assure the health of the exposed person, the observation period will continue to be 30 days as stated in §169.22(20). No change was made as a result of comment.

Comment: Concerning proposed §169.22(27), new (28), one commenter expressed concern that the proposed rules prohibit off-label use of rabies vaccine.

Response: The commission disagrees because §169.29 mentions administration of a rabies vaccine in a species for which no licensed vaccine is available to be at the discretion of the veterinarian. However, these animals will not be considered to be "currently vaccinated" by definition, but from a public health stance, they may be protected against rabies. No change was made as a result of this comment.

Comment: Concerning §169.23, one commenter recommended that county agencies be included in the list of recipients for reports because such reports are useful to county veterinary public health agencies for monitoring rabies trends in Texas.

Response: The commission concurs that the data serve to inform county agencies, but disagrees that expansion of the provisions of this section to include county veterinary public health agencies is necessary. These entities do not exist in each county. The commenting agency may be added to the distribution list by making a request. Moreover, all stakeholders have access to the data in question through the department website. No change was made as a result of this comment.

Comment: Concerning §169.26, one commenter requested that the commission move forward from what is considered minimal standards for the welfare and comfort of the animals.

Response: The commission disagrees because many facilities have difficulty meeting current minimum standards. While the commission understands the desire to make standards more stringent, an effort of this nature may present economic hardship for some entities. No change was made as a result of this comment. Further, the legislature has designated the rules adopted by the department as "minimum standards" (Texas Health and Safety Code, §826.102).

Comment: Concerning §169.26(b)(2), one commenter stated that this should be changed to "Dogs and cats shall be fed at least twice a day, except as directed by a veterinarian."

Response: The commission disagrees. It would be difficult to justify making this a requirement because once-a-day feeding is an acceptable practice. Additionally, many animal shelters have staffing shortages, which would make implementation of the suggested requirement problematic. The phrase "except as directed by a veterinarian" should address the needs of animals that need to be fed more frequently due to age or medical condition. No change was made as a result of this comment.

Comment: Concerning §169.26(b)(4), one commenter stated that the wording is redundant and could be removed if "species-specific food" were added to §169.26(b)(1).

Response: The commission disagrees and does not feel that the wording is redundant. Section 169.26(b)(1) covers generalities on food quality. The following areas cover other aspects, such as feeding frequency or other special needs: §169.26(b)(2) focuses on dogs and cats; §169.26(b)(3) focuses on domestic ferrets; and §169.26(b)(4) focuses on all other animals. No change was made as a result of this comment.

Comment: Concerning §169.26(c), one commenter stated that there is no reason why water should not be available at all times.

Response: The commission disagrees. This would be a difficult requirement for animal shelters to meet on a consistent basis. It's not always possible or practical to meet such a mandate due to actions or medical conditions of the animal. No change was made as a result of this comment.

Comment: Concerning §169.26(g), one commenter asked if there was any way to change the population of 75,000 to smaller counties, like with populations of 20,000 or more.

Response: The commission disagrees because the population criterion of 75,000 was set by legislature (Texas Health and Safety Code, §823.002). No change was made as a result of this comment.

Comment: Concerning §169.26(g), one commenter had concerns about shelters located in a county with a population of less than 75,000 being exempt from minimum standards because it may be interpreted that animals in these counties do not have to be vaccinated against rabies.

Response: The commission disagrees because this exemption only applies to minimum standards listed in §169.26. Additionally, the population criterion of 75,000 was set by the legislature (Texas Health and Safety Code, §823.002). No change was made as a result of this comment.

Comment: Concerning §169.27(a), "Quarantine Method and Testing," one commenter recommended the following language: "When a dog, cat, or domestic ferret which has bitten a human has been identified, the custodian will place the animal in quarantine as defined in the Texas Health and Safety Code, §826.002, until the end of the 10-day observation period. The animal must also be quarantined if there is probable cause to believe that it has otherwise exposed a human to rabies." The commenter stated that the term "potential exposure" is too vague for this statement and the recommended verbiage is more appropriate to protecting public health while reflecting the intent of the corresponding statute.

Response: The commission agrees. Confusion could be created by the broader term of "potential exposure." Therefore, the current rule language pertaining to bites will be reinstated and the "probable cause to believe" language already in use in the Texas Health and Safety Code, §826.042, was added. Additionally, a new definition for "Potential Exposure" in §169.22(22) was added to clarify the usage intent of the term "potential" as it is applied in these rules.

Comment: Concerning §169.27(a), "Quarantine Method and Testing," one commenter asked why the word "must" was changed from "shall" in the sentence, "The animal must be placed in a department-licensed quarantine facility specified by the local rabies control authority and observed at least twice daily."

Response: The commission disagrees because the word "must" was not changed in §169.27(a) because the word "must" has been included in the rules text since 1980; the word "shall" was never used in the rule text sentence. No change was made as a result of this comment.

Comment: Concerning §169.27(a)(4), one commenter would like to see the language "and is not allowed to run free" included for animals at the time of potential exposure.

Response: The commission disagrees. This concern is already addressed in 169.27(a)(1) in which the animal has to be kept in a secure enclosure to prevent escape. No change was made as a result of this comment.

Comment: Concerning §169.27(f), one commenter asked how the 30-day observation period is determined.

Response: The commission responds that the reason for observation is the fact that rabies virus may be in saliva for a period of time prior to the onset of clinical signs of rabies in the animal. If the animal being observed is free of clinical signs of rabies at the end of the observation period, there was no human rabies exposure. Guidance from the Centers for Disease Control and Prevention indicates that the animals subject to a 30-day observation period according to this rule may have rabies virus present in the saliva up to 2 weeks prior to the onset of clinical signs. To assure the health of the exposed person, the observation period will continue to be 30 days. No change was made as a result of this comment.

Comment: Concerning §169.28(a)(3), "Quarantine procedures," one commenter asked why the wording "concerning unowned animals may be destroyed" was being taken out. The commenter stated that from the perspective of a local rabies control authority, flexibility in handling unowned stray animals is vital.

Response: The commission disagrees. Section 169.28(a)(3) was deleted in proposed language because it was redundant of language in §169.27(b); therefore, the concern of the commenter pertaining to flexibility in handling unowned animals is still addressed in the proposed rules. No change was made as a result of this comment.

Comment: Concerning §169.29(a), "Vaccination Requirement," one commenter expressed concern that the change from a 1-year booster after initial rabies vaccination to vaccination according to the veterinarian's discretion may cause some confusion among owners and veterinarians. The commenter felt that the 1-year booster followed by 3-year boosters was a reasonable requirement.

Response: The commission disagrees. Veterinarians still need to follow label recommendations for the vaccines they administer. The new verbiage is less prescriptive to accommodate evolution in vaccine products as to time periods for initial and booster administrations. No change was made as a result of this comment.

Comment: Concerning §169.29(a), "Vaccination Requirement," one commenter mentioned that it states that hybrids should be vaccinated, but by eliminating hybrids from the definition in §169.22(8), it becomes totally elective or subject to local ordinance. Under the current definition, it appears to be mandatory, as dogs and cats must be vaccinated, so it seems that the commission is reversing its policy.

Response: The commission disagrees; the current position is not being reversed. Current language recommends the vaccination of wolf-dog hybrids. However, since there is no approved vaccine for these hybrids and it involves off-label use, vaccination is not mandated. No change was made as a result of this comment.

Comment: Concerning §169.29(a), "Vaccination Requirement," one commenter stated that the provision for veterinarians to write exemption letters for sick animals should not be removed.

Response: The commission disagrees because there has been no provision for veterinarians to write exemption letters for sick animals. No change was made as a result of this comment.

Comment: Concerning §169.29(a), "Vaccination Requirement," one hundred eighty-six commenters stated that they would like to see a vaccination exemption for ill or aging animals included in the rules to avoid the risk of the animal being confiscated and euthanized.

Response: The commission presented this issue to the State Health Services Council. The decision was made to table the discussion and any modification to the rules until evidence-based guidance could be provided by the National Association of State Public Health Veterinarians (NASPHV); this association has agreed to consider reviewing this issue at a future meeting. No change was made as a result of this comment.

Comment: Concerning §169.29(a), "Vaccination Requirement," one commenter stated that they would like the department to set up a panel to study veterinarian and drug company recommendations regarding use of rabies vaccine in certain compromised animals, in order to come up with a reasonable set of guidelines for exceptions.

Response: The commission presented this issue to the State Health Services Council. The decision was made to table the discussion and any modification to the rules until evidence-based guidance could be provided by the NASPHV; this association has agreed to consider reviewing this issue at a future meeting. No change was made as a result of comments.

Comment: Concerning §169.29(a), "Vaccination Requirement," one commenter stated that it could be clarified by stating, "the revaccination due date may not exceed the recommended interval for booster vaccination as established by the manufacturer or vaccination requirements instituted by local ordinance." The commenter said that doing so would eliminate the confusion associated with the current definition and interpretation of the existing rule.

Response: The commission disagrees with the comment because the commenter's proposed language would deny veterinarians prescriptive flexibility if, for example, an animal's vaccination series had to be modified slightly due to medical issues. Like physicians, veterinarians are licensed to practice in Texas by their respective licensing boards and are held accountable to conduct themselves within the confines of their practice act. No change was made as a result of this comment.

Comment: Concerning §169.29(a), one commenter had concerns about allowing vaccination frequency to be at the discretion of veterinarians and that confusion exists in the interpretation of language both in the current and proposed rules. The same commenter expressed concerns that veterinarians would take advantage of having this discretion and set their own vaccination standards.

Response: The commission disagrees because veterinarians still cannot prescribe revaccination due dates that exceed the recommended booster interval as established by the manufacturer. However, it gives veterinarians some prescriptive flexibility if, for example, an animal's vaccination series had to be modified slightly due to medical issues. Like physicians, veterinarians are

licensed to practice in Texas by their respective licensing boards and are held accountable to conduct themselves within the confines of their practice act. No change was made as a result of this comment.

Comment: Concerning §169.29(b)(3), one commenter expressed concern that there was a requirement for including the expiration date of the vaccine on the rabies vaccination certificate because this information is not required on a prototype rabies vaccination certificate provided by the NASPHV. The same commenter wanted to add the approved duration of immunity for the vaccine and category of vaccination (initial or booster) to the certificate.

Response: The commission agrees to delete the requirements for the vaccine expiration date; additionally, the commission deleted the requirement for the veterinarian's phone number, which is also a field not included on the NASPHV prototype certificate. Duration of immunity and category of vaccination were not added. The commission finds it unnecessary to ask for the deleted information or to add requested additional information. These data can be acquired in the course of a rabies exposure investigation using other information on the certificate.

Comment: Concerning §169.22(30), a commenter suggested that the definition of "Zoonosis control representative" should be deleted because by statute any employee of the department can be eligible to conduct facility inspections; therefore, this term is not referenced in the rules.

Response: The commission agrees and the definition in §169.22(30) was deleted.

Comment: Concerning §169.26(a)(6), a commenter determined that the reference to only a "quarantine" facility should be deleted in order to include other facilities, which makes the language consistent with the intent of the section title.

Response: The commission agrees and the word "quarantine" was deleted.

Comment: Concerning §169.28(a)(2), a commenter feels that the change of the following terms in the proposed language will provide for clarity of intent and consistency of usage: change "rabies-suspect animals" to "quarantined animals" and change "animals suspected of shedding rabies virus" to "quarantined animals."

Response: The commission agrees and the revisions were made.

Comment: Concerning the proposed language in §169.30(a) and (b), a commenter stated that it was too broad, making it subject to misinterpretation and detrimental unintended consequences; contact with a high-risk animal would not be enough of a rabies-exposure risk to warrant mandatory confinement.

Response: The commission agrees and the text was revised to the original language, which addresses contact with a rabid animal only. Additionally, local governments can be more restrictive and include contact with high-risk animals in ordinance if they deem it important for rabies control issues in their area of the State.

Comment: Concerning §169.30(d), a commenter noted that the full name of the publication being referenced is the Compendium of Animal Rabies Prevention and Control.

Response: The commission agrees and has revised the publication to "Compendium of Animal Rabies Prevention and Control."

Comment: Concerning §169.32, a commenter feels that the following sentence should be deleted: "Any dog or cat that has received a rabies vaccine not licensed by the United State Department of Agriculture or has been vaccinated under the authority of a veterinarian who was not licensed to practice veterinary medicine in the United States may be admitted but must be vaccinated according to Texas requirements within 30 days after entering Texas." This statement is unnecessary because this section deals with international movement of dogs and cats into Texas.

Response: The commission agrees and has deleted the sentence because the information contained in the deleted sentence pertains to animals residing in Texas; those requirements are described in detail in other sections of the rules.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §826.011, which provides the department with the authority to administer the rabies control program and adopt rules necessary to effectively administer this program; §826.012, which provides that rules adopted by the department are minimum standards for rabies control; §826.042, which provides that the department shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine; §826.045, which requires the department to adopt rules to enforce an area rabies quarantine; §826.051, which requires the department to adopt rules governing the types of facilities that may be used to quarantine or impound animals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

§169.22. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Unless defined below, all words have definitions as provided in the Texas Health and Safety Code, §826.002.

(1) Animal--Any mammal, domesticated or wild.

(2) Assistance animal--An animal that is specially trained or equipped to help a person with a disability and that:

(A) is used by a person with a disability who has satisfactorily completed a specific course of training in the use of the animal; and

(B) has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide animals with training of this type.

(3) Cat--Any domestic cat, excluding hybrids.

(4) Confinement--The restriction of an animal to an area, in isolation from other animals and people, except for contact necessary for its care.

(5) Currently vaccinated--Vaccinated and satisfying all the following criteria.

(A) The animal must have been vaccinated against rabies with a vaccine licensed by the United States Department of Agriculture (USDA) for that animal species at or after the minimum age requirement and using the recommended route of administration for the vaccine.

(B) At least 30 days have elapsed since the initial vaccination.

(C) The time elapsed since the most recent vaccination has not exceeded the recommended interval for booster vaccination as established by the manufacturer.

(6) Custodian--A person or agency which feeds, shelters, harbors, owns, has possession or control of, or has the responsibility to control an animal.

(7) Department--The Department of State Health Services.

(8) Dog--Any domestic dog, excluding hybrids.

(9) Domestic animal--Any animal normally adapted to live in intimate association with humans or for the advantage of humans.

(10) Domestic ferret--Any *Mustela putorius furo*.

(11) Health service region--A contiguous group of Texas counties, so designated by the Executive Commissioner of the Health and Human Services Commission.

(12) High-risk animals--Those animals which have a high probability of transmitting rabies; they include skunks, bats, foxes, coyotes, and raccoons.

(13) Housing facility--Any room, building, or area used to contain a primary enclosure or enclosures.

(14) Humanely killed--To cause the death of an animal by a method which:

(A) rapidly produces unconsciousness and death without pain or distress; or

(B) utilizes anesthesia produced by an agent which causes painless loss of consciousness, and death following such loss of consciousness.

(15) Hybrid--Any offspring of two animals of different species.

(16) Impoundment--The collecting and confining of an animal by a government entity or government contractor pursuant to a state or local ordinance.

(17) Impoundment facility--An enclosure or a structure in which an animal is collected or confined by a government entity or government contractor pursuant to a state or local ordinance.

(18) Local rabies control authority--The officer designated by the municipal or county governing body under the Texas Health and Safety Code, §826.017.

(19) Low-risk animals--Those animals which have a low probability of transmitting rabies; they include all animals of the orders Didelphimorphia, Insectivora, Rodentia, Lagomorpha, and Xenarthra.

(20) Observation period--The time following a potential rabies exposure during which the health status of the animal responsible for the potential exposure must be monitored. The observation period for dogs, cats, and domestic ferrets (only) is 10 days (240 hours); the observation period for other animals, not including those defined as high risk or low risk, is 30 days. All observation periods are calculated from the time of the potential exposure.

(21) Police service animal--An animal as defined in the Texas Penal Code, §38.151.

(22) Potential exposure--An incident in which an animal has bitten a human or in which there is probable cause to believe that an animal has otherwise exposed a human to rabies; also referred to as a potential rabies exposure.

(23) Primary enclosure--Any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, or hutch.

(24) Quarantine facility--A structure where animals are held for rabies observation.

(25) Quarantine period--That portion of the observation period during which an animal that has potentially exposed a human to rabies is under physical confinement for observation as provided for in §169.27 of this title (relating to Quarantine Method and Testing).

(26) Sanitize--To make physically clean and to destroy disease-producing agents.

(27) Unowned animal--Any animal for which a custodian has not been identified.

(28) Vaccinated--Properly administered by or under the direct supervision of a veterinarian with a rabies vaccine licensed for use in that species by the USDA.

(29) Veterinarian--A person licensed to practice veterinary medicine in the United States.

(30) Zoonosis Control Branch--The branch within the department to which the responsibility for administering these rules is assigned.

§169.26. Facilities for the Quarantining or Impounding of Animals.

(a) Generally.

(1) Structural strength. Housing facilities shall be structurally sound and shall be maintained in good repair in order to protect the animals from injury, to contain them, and to prevent transmission of diseases.

(2) Water and electric power. Reliable and adequate electric power, if required to comply with other provisions of these sections, and adequate potable water shall be available.

(3) Storage. Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against infestation or contamination by vermin. Refrigeration shall be provided for supplies of perishable food. Non-perishable foods, such as dry food, do not require refrigeration. For example, open bags of non-perishable dry food may be stored in sealed cans, and unopened bags may be stacked on pallets or shelves with at least 12 inches of clearance between the floor and the first level.

(4) Waste disposal. Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestations, odors, and disease hazards. A suitable method shall be provided to rapidly and safely remove water and other liquid waste from housing facilities. Housing facilities should be designed to have animal excreta removed through sanitary sewers, septic systems, or garbage. All closed drainage systems should be equipped with traps, vents, and acceptable drain covers to exclude rodents and prevent any backup of sewer gas and odors into the facility.

(5) Washrooms and sinks. Facilities for personal hygiene, such as washrooms, basins, or sinks, shall be provided for employees.

(6) Management. The manager of a facility should be either an individual who has satisfactorily completed an appropriate department training course or a veterinarian.

(7) Records. Records shall be kept on each animal processed through the housing facility. At a minimum, the records shall document the animal's description, impoundment date, disposition date, and method of disposition. Records shall be available for inspection by the department.

(8) Heating. Adequate shelter shall be provided to protect animals from any form of cold or inclement weather and direct effects of wind, rain, or snow. Auxiliary heat or clean, dry bedding material shall be provided any time the ambient temperature falls below 50 degrees Fahrenheit (10 degrees Celsius) for more than four consecutive hours when animals are present. If bedding material is used, larger quantities should be used as temperatures drop.

(9) Cooling and Ventilation. Adequate shelter shall be provided to protect animals from any form of overheating and direct rays of the sun. Facilities shall be provided with fresh air either by means of windows, doors, vents, fans, or air conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as fans or air conditioning, shall be provided in indoor facilities when the ambient temperature is 85 degrees Fahrenheit (29.5 degrees Celsius) or higher.

(10) Lighting. Housing facilities shall have ample light of sufficient intensity to permit routine inspection and cleaning. Primary enclosures shall be situated to protect the animals from excessive illumination.

(11) Construction. Housing facilities must be constructed in such a manner that they will protect the animal and not create a health risk or public nuisance. The building surfaces shall be constructed and maintained so that they are impervious to moisture and may be readily sanitized. Floors shall be made of durable, nonabsorbent material.

(12) Primary enclosures. Primary enclosures shall:

(A) be structurally sound and maintained in good repair;

(B) provide convenient access to clean food and water;

(C) enable the animal to remain dry and clean;

(D) be constructed and maintained so that the surfaces are impervious to moisture and may be readily sanitized;

(E) be constructed so as to protect the animal's feet and legs from injury; and

(F) provide sufficient space to allow each animal to turn around fully, stand, sit, and lie in a comfortable position.

(b) Feeding.

(1) All food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition, size, and age of the animal.

(2) Dogs and cats shall be fed at least once a day, except as directed by a veterinarian.

(3) Domestic ferrets shall have continuous access to food.

(4) All other animals shall be fed appropriately as described on the packaging of a commercial, species-specific food or as directed by a veterinarian.

(5) Food receptacles shall be accessible to all animals and shall be located so as to minimize contamination by excreta. Food receptacles shall be durable and kept clean and sanitary. Disposable food receptacles may be used but must be discarded after each feeding or, for domestic ferrets, after 24 hours of use. Self feeders may be used for feeding dry foods to animals acclimated to their use.

(c) Watering. If potable water is not accessible to all animals at all times, it shall be offered to them at least twice daily for periods of not less than one hour, except as directed by a veterinarian. Drinking bottles may be used for animals acclimated to their use. Domestic ferrets shall have potable water accessible at all times, provided in drinking bottles of appropriate size to maintain a fresh supply. Water receptacles shall be kept clean and sanitary.

(d) Sanitation.

(1) Cleaning of primary enclosures. Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the inhabitants, but not less than daily.

(2) Sanitation of primary enclosures. Cages, rooms, and pens shall be maintained in a sanitary condition.

(3) Building and premises. Building and premises shall be kept clean.

(e) Pest Control. A regular program for the control of insects, ectoparasites, and other pests shall be established and maintained. The facility shall be free of visible signs of insects, rodents, and other vermin infestations at all times.

(f) Outdoor facilities are acceptable under this section provided those facilities meet all the requirements of this section.

(g) This section applies to all animal shelters located in counties with a population of 75,000 or greater as required by the Texas Health and Safety Code, Chapter 823, and to all quarantine or impoundment facilities regardless of county population.

§169.27. Quarantine Method and Testing.

(a) When a dog, cat, or domestic ferret which has bitten a human has been identified, the custodian will place the animal in quarantine as defined in the Texas Health and Safety Code, §826.002, until the end of the 10-day observation period. The animal must also be quarantined if there is probable cause to believe that it has otherwise exposed a human to rabies. The observation period will begin at the time of the exposure. The animal must be placed in a department-licensed quarantine facility specified by the local rabies control authority and observed at least twice daily. However, the local rabies control authority may allow the animal to be quarantined in a veterinary clinic. As an alternative, the local rabies control authority may allow home confinement. If the potential rabies exposure occurs in a city or county other than where the animal's custodian resides, the animal may be transferred to a department-licensed quarantine facility or a veterinary clinic in the city or county of the custodian's residence or allowed home confinement, if applicable, if there is mutual agreement to do so between the local rabies control authorities for the city or county where the exposure occurred and where the custodian resides. The alternative to quarantining (to include home confining) a dog, cat, or domestic ferret is to have the animal humanely killed in such a manner that the brain is not damaged and a suitable specimen (head with brain intact or brain) submitted to a department-designated laboratory for rabies testing as specified in subsection (h) of this section. To allow home confinement, the following criteria must be met.

(1) A secure enclosure approved by the local rabies control authority must be used to prevent escape.

(2) The animal has been vaccinated against rabies and the time elapsed since the most recent vaccination has not exceeded the manufacturer recommendations for the vaccine. If an unvaccinated animal is not over 16 weeks of age at the time of the potential exposure, it may be allowed home confinement.

(3) The local rabies control authority or a veterinarian must observe the animal at least on the first and last days of the home confinement.

(4) The animal was not a stray as defined in the Texas Health and Safety Code, §826.002, at the time of the potential exposure.

(b) A domestic animal which has potentially exposed a human and has been designated by the local rabies control authority as unowned may be humanely killed. A suitable specimen shall be submitted for rabies testing as specified in subsection (h) of this section.

(c) If the animal implicated in the potential exposure is a high-risk animal, it shall be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(d) If the animal implicated in the potential exposure is a low-risk animal, neither quarantine nor rabies testing will be required unless the local rabies control authority has cause to believe the animal is rabid, in which case it shall be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(e) The local rabies control authority may require an animal which has inflicted multiple bite wounds, punctures, or lacerations to a person to be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(f) If the animal implicated in the potential exposure is not included in subsection (a), (b), (c), (d), or (e) of this section, the animal will be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section or the local rabies control authority may require the animal to be quarantined at a department-licensed quarantine facility or a veterinary clinic, or confined elsewhere as deemed appropriate by the local rabies control authority for the 30-day observation period as an alternative to killing and testing. If the potential rabies exposure occurs in a city or county other than where the animal's custodian resides, the animal may be transferred to a department-licensed quarantine facility or a veterinary clinic in the city or county of the custodian's residence or allowed confinement deemed appropriate if there is mutual agreement to do so between the local rabies control authorities for the city or county where the exposure occurred and where the custodian resides.

(g) Any animal required to be quarantined under this section, which cannot be maintained in secure quarantine, shall be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(h) All laboratory specimens referred to in subsections (a) - (g) of this section shall be submitted in accordance with §169.33 of this title (relating to Submission of Specimens for Laboratory Examination).

(i) At the discretion of the local rabies control authority, assistance animals may not be required to be placed in quarantine (to include confinement) during the observation period.

(j) Police service animals are exempted from quarantine per the Texas Health and Safety Code, §826.048, including confinement.

(k) Animals should not be vaccinated against rabies during the observation period; however, animals may be treated for unrelated medical problems diagnosed by a veterinarian. If the animal becomes ill during the observation period, the local rabies control authority must be notified by the person having possession of the animal.

§169.28. Requirements of a Quarantine Facility.

(a) Quarantine procedures.

(1) A quarantine facility shall have and use written standard operating procedures (SOP) specific for that facility to ensure effective and safe quarantine procedures. The SOP shall be posted in the quarantine facility, or otherwise be readily available to all employees in the quarantine facility, and adhered to by each employee.

(2) An animal being quarantined because it may have exposed a human to rabies must be maintained in a primary enclosure, separated from all other animals by a solid partition so that there is no possibility of physical contact between animals. An empty chamber between animals is not an acceptable alternative. To prevent rabies transmission, handling of quarantined animals shall be minimized and carried out in a manner that avoids physical contact of other animals and people with the saliva of quarantined animals. Individuals handling quarantined animals should utilize appropriate personal protective equipment. To prevent escape, the primary enclosure must be enclosed on all sides, including the top. Quarantine cages, runs, or rooms must have "Rabies Quarantine" signs posted.

(b) Facilities planning. Any entity desiring to construct a quarantine facility shall submit plans to the department for review prior to beginning construction.

(c) Inspection requirements of quarantine facilities.

(1) It will be the responsibility of the department to inspect all quarantine facilities, including those operated by government contractors. The inspection of the premises will be accomplished during ordinary business hours. All deficiencies will be documented in writing. Those that are of sufficient significance to affect the humane care or security of any animal housed within the facility must be corrected within a reasonable period of time.

(2) The inspections will be accomplished annually or more frequently when significant discrepancies have been identified. Any facility that does not achieve acceptable standards will not be licensed for rabies quarantine operations.

(3) The quarantine facility manager has the right to appeal the results of the inspection. If the opinion of management of the quarantine facility is in conflict with the inspection, he or she may request a review of the inspection by the manager of the department's Zoonosis Control Branch. The appeal listed in this paragraph will be made in writing through the regional director's office of the health service region in which the quarantine facility is located.

§169.29. Vaccination Requirement.

(a) The custodian (excluding animal shelters as defined in the Texas Health and Safety Code, §823.001) of each dog or cat shall have the animal vaccinated against rabies by 16 weeks of age. The animal must be vaccinated by or under the direct supervision of a veterinarian with rabies vaccine licensed by the United States Department of Agriculture for that animal species at or after the minimum age requirement and using the recommended route of administration for the vaccine. The attending veterinarian has discretion as to when the subsequent vaccination will be scheduled as long as the revaccination due date does not exceed the recommended interval for booster vaccination as established by the manufacturer or vaccination requirements instituted by local ordinance. The custodian shall retain each vaccination certificate until the animal receives a subsequent booster. Livestock (especially those that have frequent contact with humans), domestic

ferrets, and wolf-dog hybrids should be vaccinated against rabies. The administration of a rabies vaccine in a species for which no licensed vaccine is available is at the discretion of the veterinarian; however, an animal receiving a rabies vaccine under these conditions will not be considered to be vaccinated against rabies virus in potential rabies exposure situations.

(b) An official rabies vaccination certificate shall be issued for each animal by the veterinarian responsible for administration of the vaccine and contain the following information:

(1) custodian's name, address, and telephone number;

(2) animal identification-species, sex (including neutered if applicable), approximate age, size (pounds), predominant breed, and colors;

(3) vaccine used-product name, manufacturer, and serial number;

(4) date vaccinated;

(5) revaccination due date;

(6) rabies tag number if a tag is issued;

(7) veterinarian's signature, signature stamp, or computerized signature, plus address and license number.

(c) Each veterinarian who issues a rabies vaccination certificate, or the veterinary practice where the certificate was issued, shall retain a readily retrievable copy of the certificate for a period of not less than two years after the revaccination due date.

(d) If a veterinarian ceases the practice of veterinary medicine, the duplicate rabies vaccination certificates retained by that practice shall be turned over to the local rabies control authority. This does not apply to the sale or lease of a practice, when the records of the practice are transferred to a new owner.

§169.30. Disposition of Domestic Animals Exposed to Rabies.

(a) Not currently vaccinated animals which have been bitten by, directly exposed by physical contact with, or directly exposed to the fresh tissues of a rabid animal shall be:

(1) humanely killed; or

(2) immediately vaccinated against rabies, placed in confinement for 90 days, and given booster vaccinations during the third and eighth weeks of confinement. For young animals, additional vaccinations may be necessary to ensure that the animal receives at least two vaccinations at or after the age prescribed by the United States Department of Agriculture (USDA) for the vaccine administered.

(b) Currently vaccinated animals which have been bitten by, directly exposed by physical contact with, or directly exposed to the fresh tissues of a rabid animal shall be:

(1) humanely killed; or

(2) immediately given a booster rabies vaccination and placed in confinement for 45 days.

(c) These provisions apply only to domestic animals for which a USDA-licensed rabies vaccine is available.

(d) In situations where none of the requirements of this section are applicable, the recommendations contained in the latest edition of the publication titled Compendium of Animal Rabies Prevention and Control, published by the National Association of State Public Health Veterinarians, should be followed. The administration of a rabies vaccine in a species for which no licensed vaccine is available is at the discretion of the veterinarian; however, an animal receiving a rabies vaccine under these conditions will not be considered to be vaccinated against rabies virus in potential rabies exposure situations.

§169.32. International Movement of Dogs and Cats into Texas.

The federal government regulates the entry of pets into the United States; requirements set forth in this section are in addition to meeting federal requirements. Each dog and cat 12 weeks of age or older to be transported into Texas for any purpose shall be admitted only when vaccinated against rabies and the time elapsed since the most recent vaccination has not exceeded the manufacturer recommendations for the vaccine. If an initial vaccination was administered less than 30 days prior to arrival in the United States, the custodian must confine the dog or cat for the balance of the 30 days. Additionally, documentation must be provided by a vaccination certificate showing the date of vaccination, vaccine used, and signature of the veterinarian responsible for administration of the vaccine. If the dog or cat is less than 12 weeks of age, the custodian must confine the animal until 30 days subsequent to its initial vaccination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705970
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: December 20, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 60. MAINTENANCE REVIEWS

SUBCHAPTER A. MAINTENANCE EQUIPMENT REVIEW

31 TAC §§60.2 - 60.4

The Texas Parks and Wildlife Commission adopts new §§60.2 - 60.4, concerning Maintenance Equipment Review System. Sections 60.2 and 60.3 are adopted with changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6999). Section 60.4 is adopted without changes and will not be republished.

The change to §60.2 changes the term "capitalized personal property" to "capitalized maintenance equipment" in paragraph (1) for ease of reference in the remainder of the rule. The change to §60.2 also modifies paragraph (9) by changing the definition of "outdated equipment" by replacing the term "maintenance equipment" with the term "capitalized maintenance equipment."

The change to §60.3 removes the term "capitalized" from subsection (b). As a result of the change in §60.2(9), the term is unnecessary.

Section 18 of House Bill (H.B.) 12, enacted by the 80th Texas Legislature (2007), amended the Parks and Wildlife Code by adding §11.251, which requires the department to establish by rule an equipment review system through which the department annually determines whether any of the department's maintenance equipment has become outdated equipment. The new rules implement the requirements of H.B. 12.

New §60.2, concerning Definitions, sets forth the meanings of the words and terms used in the subchapter. The definitions of "commission", "department," "department purpose," "operational", and "replacement cost" are self-explanatory.

The definition of "capitalized maintenance equipment" refers to maintenance equipment (defined in §60.2(7)) having an acquisition value of $5,000 or more. This definition is intended to be consistent with the term as used in reference to personal property in the State Comptroller's State Property Accounting Process User's Guide. As required by this guide, the department systematically tracks the acquisition and disposition of capitalized property. The department may replace or otherwise acquire capitalized personal property to the extent the department has sufficient capital budget authority provided in the biennial general appropriations act. Therefore, the term "capitalized maintenance equipment" is defined to distinguish capitalized maintenance equipment from lower-cost maintenance equipment such as hand tools, various kinds of hardware, and small-engine equipment such as push lawn mowers, and welders, that can be more easily repaired or replaced. The maintenance equipment review system described in the rules applies only to capitalized maintenance equipment. The department will periodically evaluate the system to determine if there are types of non-capitalized maintenance equipment that should be included in the review system.

The definition of "fair market value" is based on the definition contained in other law, specifically, Internal Revenue Service regulations located at 26 C.F.R. §20.2031-1(b).

The definition of "maintenance equipment" is the same as the definition contained in Parks and Wildlife Code, §11.251(a)(1), as added by H.B. 12. The definition is set out in the rule for ease of reference.

The definition of "maintenance cost" is intended to include the cost of keeping a piece of maintenance equipment in working order, but does not include the cost of routine service. Normally, the manufacturer of any piece of equipment provides instructions for scheduled, periodic care intended to preserve the functionality of the equipment over its designed lifespan. The costs associated with routine service are part of the normal, expected, and routine costs of ownership. The definition of "maintenance cost" is intended to address those costs over and above those associated with routine service.

The definition of "outdated equipment" is also based on the definition in Parks and Wildlife Code, §11.251(a)(2), as added by H.B. 12.

New §60.3, concerning Maintenance Equipment Review System, establishes the methodology and procedures the department will follow in determining whether capitalized maintenance equipment is outdated and should be sold.

New §60.3(a) requires the department to prepare an annual report for all capitalized maintenance equipment in the department's inventory. The report will indicate each piece of equipment's fair market value, maintenance costs, and operational status. For each piece of equipment that is not operational, the report will indicate whether it could reasonably be made operational and whether it continues to serve the department's purposes.

New §60.3(b) requires the department, within 60 days after completing the annual report required under subsection (a), to initiate the process to sell or otherwise dispose of outdated equipment that meets any of the following three criteria: (1) the equipment is not operational and cannot reasonably be made operational, (2) the equipment no longer serves a department purpose, or (3) the equipment has a fair market value that is less than the maintenance cost of the equipment; the cost to replace the equipment is less than the annual maintenance cost of the equipment; and, both sufficient funds and capital budget authority are appropriated and available to replace the equipment without unduly impairing other department operations. The third criteria is intended to address situations in which a critical piece of capitalized maintenance equipment is in need of significant repairs that may exceed the fair market value of the equipment, but the repair costs are less than the cost to replace the equipment and the agency lacks sufficient capital budget authority to replace the equipment without unduly impairing other department operations. Although such a situation may not be common in the future, such a provision will enable the department to repair and continue using such equipment.

New §60.4, concerning Sale of Outdated Equipment, sets forth the provisions governing the sale or disposal of capitalized maintenance equipment the department has determined is outdated.

New §60.4(a) requires the sale or disposal of outdated equipment to be in accordance with applicable law.

New §60.4(b) allows the department to dispose of surplus property by methods other than those described in the rule, provided the disposal is conducted according to applicable law. Other provisions of this rule provide for the mandatory sale or disposition of certain maintenance equipment. Therefore, new §60.4(b) is intended to acknowledge that there are situations in which the department is permitted, but not required, to sell or dispose of maintenance equipment.

The rules as adopted will function collectively to establish a system to regularly evaluate maintenance equipment to ensure its continued value to the department as directed by the Texas Legislature.

The department received one comment opposing adoption of the proposed rules. The commenter stated that he was a former employee of the department and had witnessed the destruction of equipment and property and seen visitors and department employees and the public placed in danger. The commenter also stated that park managers are incompetent. The department disagrees with the commenter and responds that the comment is not germane to the rulemaking. The rules as adopted are intended only to address the establishment of a system for determining the usefulness of maintenance equipment in the department's inventory. No changes were made as a result of the comment.

The department received three comments supporting adoption of the rules as proposed.

The new rules are adopted under the authority of Section 18, House Bill 12, 80th Texas Legislature, Regular Session, (2007) which amended Parks and Wildlife Code, Chapter 11, to add §11.251 requiring the department by rule to establish an equip-

ment review system through which the department annually determines whether equipment has become outdated.

§60.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capitalized maintenance equipment--Maintenance equipment having an acquisition value of $5,000 or more.

(2) Commission--Texas Parks and Wildlife Commission.

(3) Department--Texas Parks and Wildlife Department.

(4) Department purpose--Any function of the department required or authorized by state or federal law.

(5) Fair market value--The price at which a piece of maintenance equipment would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(6) Maintenance cost--The annual cost to repair or otherwise keep a piece of maintenance equipment in working order, but does not include routine maintenance, such as oil changes, tire replacement, and lubrication, that are part of a scheduled regime of equipment care.

(7) Maintenance equipment--Personal property owned by the department that is used to administer, operate, preserve, repair, expand, or otherwise maintain real property, including improvements and fixtures, owned or operated by the department.

(8) Operational--The condition of being currently in use or functionally capable of being used.

(9) Outdated equipment--Capitalized maintenance equipment that:

(A) has a fair market value that is less than the maintenance cost;

(B) is not operational and cannot reasonably be made operational; or

(C) no longer serves a department purpose.

(10) Replacement cost--The cost of replacing maintenance equipment with maintenance equipment having similar functionality.

§60.3. Maintenance Equipment Review System.

(a) For each piece of capitalized maintenance equipment in the department's inventory, the department shall prepare an annual report containing the following:

(1) the fair market value;

(2) the maintenance cost for the equipment for the preceding twelve months;

(3) whether the equipment is operational or can reasonably be made operational; and

(4) whether the equipment continues to serve a department purpose.

(b) Within 60 days after the completion of the report described in subsection (a) of this section, the department shall initiate the process to sell or otherwise dispose of outdated equipment that meets any of the following three criteria:

(1) the equipment is not operational and cannot reasonably be made operational;

(2) the equipment longer serves a department purpose;

(3) the equipment has a fair market value that is less than the maintenance cost of the equipment and both of the following apply:

(A) The cost to replace the equipment is less than the annual maintenance cost of the equipment; and

(B) Sufficient funds and capital budget authority are appropriated and available to replace the equipment without unduly impairing other department operations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2007.

TRD-200706080
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: December 23, 2007
Proposal publication date: October 5, 2007
For further information, please call: (512) 389-4775

SUBCHAPTER B. MAINTENANCE PROVIDER REVIEW

31 TAC §60.10, §60.11

The Texas Parks and Wildlife Commission adopts new §60.10 and §60.11, concerning Maintenance Provider Review System, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7001).

House Bill (H.B.) 12, enacted by the 80th Texas Legislature, amended the Parks and Wildlife Code by adding new §11.252, which requires the department to establish by rule a maintenance provider review system through which the department annually determines whether a maintenance task performed by the department could be performed by a third-party contractor in a manner that is more cost-effective than that used by the department and yields a result that is equal to or greater than the quality of the result produced by the department. The provisions of H.B. 12 require the department to contract with a third party for the performance of any maintenance task if the department determines that a third-party contractor could perform a maintenance task in a more cost-effective manner that is equal to or greater than the quality performed by the department, and allows the department to consider the cost of administering a contract. The department notes that the maintenance provider review system will track only those costs associated with maintenance currently performed by department personnel.

New §60.10, concerning Definitions, sets forth the meanings of the following words and terms used in the subchapter: "capitalized personal property;" "commission," "department," "department facility," and "maintenance service."

The definition of "capitalized personal property" refers to personal property having an acquisition value of $5,000 or more. Since the types of facilities that require maintenance are generally larger items of personal property, the rule limits the types of personal property covered by the rule to capitalized personal property, which is personal property having an acquisition value of $5,000 or more. This definition is intended to be consistent

with the term as used in reference to personal property in the State Comptroller's State Property Accounting Process User's Guide. The definitions of "commission" and "department" are self-explanatory.

The definition of "department facility" is intended to identify the specific types of facilities operated by the department that would be affected by the requirements of the subchapter, specifically, wildlife management areas, fish hatcheries, state parks, and state historic sites. The definition is necessary because the provisions of H.B. 12 require that the maintenance provider review system encompass the administration, operation, preservation, repair, and expansion of real property owned or operated by the department.

The definition of "maintenance service" would include the administration, operation, preservation, repair, and expansion of capitalized personal property or real property owned or operated by the department, and is based on the statutory definition of "maintenance" in H.B. 12.

New §60.11, concerning Maintenance Provider Review System, establishes the methodology and procedures the department will follow in determining whether maintenance activities and services should be contracted to a third party.

New §60.11(a)(1) requires the department to prepare an annual report identifying the maintenance cost of performing groundskeeping, janitorial services, minor repairs, and solid waste collection and removal on each facility operated by the department. These are the maintenance tasks that are most commonly performed by department personnel. Also, given the often unique nature of department facilities and for ease of implementation, the report will identify the maintenance costs for each facility rather than on a regional or state-wide basis. The department operates many facilities across the state. These facilities are in urban, suburban, rural, and remote environments. Therefore, the local cost of providing a specific maintenance service may vary widely. The department's intent in structuring the review system to operate on a facility-by-facility basis is to ensure that the potential costs of third-party performance are accurately determined at a local level.

New §60.11(a)(2) requires the annual report to identify the cost of performing the maintenance service by the department, the estimated cost of performing the maintenance service by a third-party contractor (including anticipated contract management costs), and whether the quality of the maintenance service performed by the third party contractor will be equal to or greater than the quality of the maintenance service performed by the department personnel.

New §60.11(a)(3) requires the annual report to identify those maintenance services for which the cost of performing the maintenance service by department personnel exceeds the estimated cost of performing the maintenance service by a third-party contractor (including the department's anticipated contract management cost) and whether the quality of the maintenance service performed by the third-party contractor will be equal to or greater than the quality of the maintenance service performed by department personnel.

New §60.11(c) requires the department, within 60 days after completion of the annual report, to begin the process of contracting with a third party to perform those maintenance services that the annual report reveals could be performed by a third party contractor for a price that is less than the cost the department incurs in performing the service using department personnel, and the quality of the third-party service is equivalent or better than that of the department, taking into consideration the anticipated cost to the department of administering the contract.

The rules as adopted will function collectively to establish a system to regularly evaluate maintenance activities to ensure that they are cost-effective, as directed by the Texas Legislature.

The department received one comment opposing adoption of the proposed rules.

The commenter stated that the rules should clarify that no TPWD property will be under the complete operation of a private vendor and that tree care service should be specifically addressed by the rules, to include tree pruning and removal, identification of hazardous trees, correction of tree hazards, and removal of hazardous trees. The commenter further stated that tree care service is a specialized area and should not be thought to be a part of, nor included in, the groundskeeping and landscaping category. The department disagrees with the comments and responds that the rules are intended to address the identification of specific maintenance services that can be performed in a more cost-effective manner by a third-party contractor. The rules are not intended to address other areas of park management or operation. The department intends to comply with applicable law and procedures regarding the use of equipment by third party contractors. The department also disagrees that tree service should be a specific category of maintenance. The department responds that landscaping and groundskeeping would include tree-trimming, pruning, and removal. No changes were made as a result of the comments.

The department received one comment supporting adoption of the proposed rules.

The new rules are adopted under the authority of Section 18, House Bill 12, 80th Texas Legislature (Regular Session) which amended Parks and Wildlife Code, Chapter 11, to add §11.252 requiring the department by rule to establish an equipment provider review system through which the department annually determines whether maintenance can be more cost-effectively provided by third party contractors.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 519. TECHNICAL ASSISTANCE

SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM

31 TAC §519.8

The Texas State Soil and Water Conservation Board (State Board) adopts an amendment to 31 TAC §519.8, concerning Eligible Pay Rates, without change to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7003) and will not be republished. The amendment to the rule concerns the rate of pay that may be reimbursed to districts for technical assistance provided by their personnel. The amendment is adopted to be effective January 1, 2008.

Specifically, this adopted amendment establishes an increased pay rate, from $10.00 per hour to $15.00 per hour, as a maximum that may be reimbursed to a soil and water conservation district for technical assistance and eliminates the yearly cap that had been imposed on total earnings. The adopted amendment maintains the maximum of 40 hours that may be worked per week, but rewords the limitation. The adopted amendment is to provide districts with the opportunity to offer a pay rate that is competitive with the general work force.

No comments were received regarding adoption of the proposal.

The amendment is adopted under the Texas Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Texas Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200706002
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Effective date: January 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (254) 773-2250 x252

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER I. FEES FOR COPIES OF RECORDS

37 TAC §1.125

The Texas Department of Public Safety adopts the repeal of §1.125, concerning Accident Records Bureau Fees, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7004).

Adoption of the repeal is necessary due to the transfer of the powers and duties for accident records from the Texas Department of Public Safety to the Texas Department of Transportation.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and S.B. 766, Acts 2007, 80th Leg., R.S.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705994
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 20, 2007
Proposal publication date: October 5, 2007
For further information, please call: (512) 424-2135

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37 TAC §1.127

The Texas Department of Public Safety adopts the repeal of §1.127, concerning Fees for Search for Record, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7004).

Adoption of the repeal is necessary due to the section having been superseded by the Public Information Act.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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CHAPTER 3. TEXAS HIGHWAY PATROL

SUBCHAPTER A. CRASH INVESTIGATIONS

37 TAC §§3.1 - 3.9

The Texas Department of Public Safety adopts amendments to §§3.1 - 3.9, concerning Crash Investigations, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7005).

Adoption of the amendments to the title and sections of subchapter A are necessary in order to update terminology. Due to a nationwide industry standard, the word "accident" is changed to "crash." Additional amendments to the sections are necessary in order to correct a reference to statute and to change the name of the division within the department responsible for investigating and reporting crashes.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(40, which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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SUBCHAPTER A. ACCIDENT INVESTIGATIONS

37 TAC §3.10

The Texas Department of Public Safety adopts the repeal of §3.10, concerning DWI Accident Response Cost Recovery--Billing for Services, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7007).

Adoption of the repeal is necessary because the department has discontinued the Billing for Services process.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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SUBCHAPTER D. TRAFFIC SUPERVISION

37 TAC §3.52

The Texas Department of Public Safety adopts an amendment to §3.52, concerning Police Traffic Supervision on Interstate Highways in Cities of Over 50,000 Population, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7007).

Adoption of the amendment to §3.52 is necessary in order to change the name of the division responsible for police traffic supervision from Traffic Law Enforcement division to Texas Highway Patrol division due to some reorganization with the department.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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SUBCHAPTER J. PROTECTION OF STATE BUILDINGS AND GROUNDS

37 TAC §3.144

The Texas Department of Public Safety adopts amendments to §3.144, concerning Emergency Evacuations, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7008).

Adoption of the amendments to §3.144 is necessary in order to correct an error in the title of the section and to correct the name of the state agency which the department is required to notify in case of an evacuation.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department; and Texas Government Code, §411.062, which authorizes the department to adopt rules relating to the security of persons and property within the Capitol Complex.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director
Texas Department of Public Safety
Effective date: December 20, 2007
Proposal publication date: October 5, 2007
For further information, please call: (512) 424-2135

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CHAPTER 7. DIVISION OF EMERGENCY MANAGEMENT

SUBCHAPTER A. EMERGENCY MANAGEMENT PROGRAM REQUIREMENTS

37 TAC §§7.1 - 7.3

The Texas Department of Public Safety adopts amendments to §§7.1 - 7.3, concerning Emergency Management Program Requirements, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5648).

Adoption of amendments to §7.1 is necessary in order to change the title of the section to better clarify the subject of the rule.

Adoption of amendments to §7.2 is necessary in order to add language from Texas Government Code, Chapter 418 outlining the role of emergency management coordinators.

Adoption of amendments to §7.3 is necessary in order to explain the preferred method for jurisdictions to notify EMD about its emergency management program and the officials responsible for the program.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705987
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 20, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER B. EMERGENCY MANAGEMENT PLANNING AND PREPLANNING REQUIREMENTS

37 TAC §§7.11 - 7.13

The Texas Department of Public Safety adopts amendments to §§7.11 - 7.13, concerning Emergency Management Planning and Preplanning Requirements, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5649).

Adoption of amendments to §7.11 is necessary in order to provide information on the easiest method for reviewing a copy of the state emergency management plan.

Adoption of amendments to §7.12 is necessary in order to indicate that there are state standards for both the content and currency of local emergency management plans.

Adoption of amendments to §7.13 is necessary in order to reformat the section to add provisions for interjurisdictional emergency management programs authorized by Chapter 418 of the Texas Government Code, to provide more detailed information on planning requirements, to add NIMS compliance required by the Department of Homeland Security for virtually all grants, and to update the description of documents required for grants.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024 and §418.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705988
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 20, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER C. EMERGENCY MANAGEMENT OPERATIONS

37 TAC §§7.21, 7.23, 7.24, 7.26, 7.27

The Texas Department of Public Safety adopts amendments to §§7.21, 7.24, 7.26, 7.27, and new §7.23, concerning Emergency Management Operations, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5650).

Adoption of amendments to §7.21 is necessary in order to change the title of the section and to explain the purpose of a disaster declaration.

Adoption of amendments to §7.24 is necessary in order to indicate who a local official should call for help.

Adoption of amendments to §7.26 is necessary in order to clarify responsibilities during multi-agency response operations.

Adoption of amendments to §7.27 is necessary in order to add mandatory evacuation authority given to mayors and county judges during the 79th Legislative Session.

Adoption of new §7.23 is filed simultaneously with the repeal of current §7.23 and is necessary in order to add the requirement to call on resources available through mutual aid and the requirement in Chapter 418 of the Texas Government Code that cities request assistance from their county before requesting state assistance.

No comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705989
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 20, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 424-2135

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37 TAC §§7.23, 7.28, 7.29

The Texas Department of Public Safety adopts the repeal of §§7.23, 7.28, and 7.29, concerning Emergency Management Operations, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5650).

Adoption of the repeal of §7.23 is necessary as the department is simultaneously adopting a new §7.23 which adds the requirement to call on resources available through mutual aid and the requirement in Texas Government Code, Chapter 418 that cities request assistance from their county before requesting state assistance.

Adoption of the repeal of §7.28 is necessary because there is no legal authority for this rule.

Adoption of the repeal of §7.29 is necessary as these powers are already addressed in §7.21 of this title (relating to Declaration of a State of Disaster and Effects of a Declaration).

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705990
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 20, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 424-2135

♦ ♦ ♦

SUBCHAPTER D. RECOVERY AND REHABILITATION REQUIREMENTS

37 TAC §§7.41 - 7.45

The Texas Department of Public Safety adopts amendments to §7.41 and §7.42; and new §§7.43 - 7.45, concerning Recovery and Rehabilitation Requirements, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5651).

Adoption of amendments to §7.41 is necessary in order to change the name of the title and to require the chief elected official of the jurisdiction to have declared a local State of Disaster before requesting disaster recovery assistance.

Adoption of amendments to §7.42 is necessary in order to combine the procedures for requesting recovery assistance with the existing text of current §7.44, which is being simultaneously repealed.

Adoption of new §7.43 is necessary in order to describe the specific materials that should accompany a request for assistance and or state disaster declaration and where to get them. Adoption of new §7.43 is filed simultaneously with the repeal of current §7.43.

Adoption of new §7.44 is necessary in order to explain what happens after a request for assistance or state disaster declaration has been submitted to the state. Adoption of new §7.44 is filed simultaneously with the repeal of current §7.44.

Adoption of new §7.45 is necessary in order to explain what eventually happens after local governments request assistance from the state.

No comments were received regarding adoption of the amendments and new sections.

The amendments and new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705991
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 20, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 424-2135

♦ ♦ ♦

37 TAC §7.43, §7.44

The Texas Department of Public Safety adopts the repeal of §7.43 and §7.44, concerning Recovery and Rehabilitation Requirements, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5652).

Adoption of the repeal of §7.43 is necessary in order to simultaneously adopt a new §7.43 which describes the specific materials that should accompany a request for assistance and or state disaster declaration and where to get them.

Adoption of the repeal of §7.44 is necessary in order to simultaneously adopt a new §7.44 which explains what happens after a request for assistance or state disaster declaration has been submitted to the state.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705992
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 20, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 424-2135

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CHAPTER 35. PRIVATE SECURITY SUBCHAPTER Q. TRAINING

37 TAC §35.257

The Texas Department of Public Safety adopts amendments to §35.257, concerning Training Courses, without changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4948).

Adoption of the amendments to §35.257 is necessary in order to eliminate the current requirement that all individuals regulated by the Private Security Board complete certain security officer training, by requiring such training only of security officers and personal protection officers.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2007.

TRD-200705993
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 20, 2007
Proposal publication date: August 10, 2007
For further information, please call: (512) 424-2135

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.71

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to Title 37, Part 6, Chapter 151, General Provisions, §151.71, Marking of State Vehicles of the Department of Criminal Justice, without changes to the text as proposed in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6768), and it will not be republished.

The amendments are necessary to correct outdated statutory cites, conform to existing organizational structure and add an exemption for vehicles operated by field officers to conduct home visits of offenders under supervision.

No comments were received.

The amendments are adopted under Texas Government Code, §721.003.

Cross Reference to Statutes: Texas Government Code, §721.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2007.

TRD-200705955
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Effective date: December 19, 2007
Proposal publication date: September 28, 2007
For further information, please call: (512) 463-0422

♦ ♦ ♦

CHAPTER 155. REPORTS AND INFORMATION GATHERING
SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

37 TAC §155.23

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to Title 37, Part 6, Chapter 155, Reports and Information Gathering, §155.23, Site Selection Process for the Location of Additional Facilities, without changes to the text as proposed in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6769), and it will not be republished.

The amendments are necessary to conform the rule to state law and add clarity.

No comments were received.

The amendments are adopted under Texas Government Code, §492.013 and 496.007.

Cross Reference to Statutes: Texas Government Code, §493.009, 509.001, 508.118, 508.119, and 508.320; Chapter 495, Subchapter A; Chapter 499, Subchapters B, E, and G; Chapter 507.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2007.

TRD-200705956
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Effective date: December 19, 2007
Proposal publication date: September 28, 2007
For further information, please call: (512) 463-0422

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 163, Community Justice Assistance Division Standards, §163.31, Sanctions, Programs, and Services. This review is conducted pursuant to Texas Government Code, §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal in the *Texas Register*.

Cross Reference to Statutes: Texas Government Code, §492.013.

TRD-200705957
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: November 30, 2007

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 163, Community Justice Assistance Division Standards, §163.36, Mentally Impaired Offender Supervision. This review is conducted pursuant to Texas Government Code, §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal in the *Texas Register*.

Cross Reference to Statutes: Texas Government Code, §509.003 and §614.013.

TRD-200705958
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: November 30, 2007

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 163, Community Justice Assistance Division Standards, §163.39, Residential Services. This review is conducted pursuant to Texas Government Code, §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal in the *Texas Register*.

Cross Reference to Statutes: Texas Government Code, §492.013.

TRD-200705959
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: November 30, 2007

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Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Texas Administrative Code, Chapter 252, Administration. This review is conducted in accordance with Government Code §2001.039.

CSEC has conducted a preliminary review of Chapter 252 and has determined that the reasons for initially adopting the chapter continue to exist.

All comments or questions regarding this review may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, at The Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.state.tx.us. Any proposed changes to Chapter 252 will be published for comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register*.

§252.1. Definition of State Agency for Billing Purpose of the 9-1-1 Service Fees and Surcharges.

§252.2. Purchase of Goods and Services.

§252.4. Charges for Open Records Requests.

§252.5. Local Adoption of State Provision or Rule.

§252.6. Wireless Service Fee Proportional Distribution.

TRD-200705964

Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: November 30, 2007

♦ ♦ ♦

Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board files this notice of intent to review Title 31, Part 17, Chapter 517, Subchapter B, §§517.22 - 517.37, Cost-Share Assistance for Brush Control, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The agency finds that the reason for adopting the rules continues to exist.

As required by §2001.039 of the Texas Government Code, the agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tsswcb.state.tx.us, or by facsimile at (254) 773-3311.

TRD-200706003
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: November 30, 2007

♦ ♦ ♦

The Texas State Soil and Water Conservation Board files this notice of intent to review Title 31, Part 17, Chapter 527, §§527.1 - 527.7, Removal of a District Director, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The agency finds that the reason for adopting the rules continues to exist.

As required by §2001.039 of the Texas Government Code, the agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tsswcb.state.tx.us, or by facsimile at (254) 773-3311.

TRD-200706004
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: November 30, 2007

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice (Board) has completed its review of Title 37, Part 6, Chapter 151, General Provisions, §151.71, Marking of State Vehicles of the Department of Criminal Justice, in accordance with the requirements of Texas Government Code, §2001.039. The Board has determined that the reasons for adopting §151.71 continue to exist, and it readopts the section.

Notice of the review of §151.71 was published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6837). No comments were received in response to the notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §151.71 in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6768). The Board adopted the amended rule on November 29, 2007; and it is published in this issue of the *Texas Register.*

TRD-200705962
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: November 30, 2007

♦ ♦ ♦

The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 155, Reports and Information Gathering, §155.23, Site Selection Process for the Location of Additional Facilities, in accordance with the requirements of the Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §155.23 continue to exist, and it readopts the section.

Notice of the review was published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6837). No comments were received as a result of that notice.

As a result of the rule review, the Texas Department of Criminal Justice (TDCJ) published proposed amendments to §155.23 in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6769). The Board adopted the amended rule on November 29, 2007, and it is published in this issue of the *Texas Register.*

TRD-200705961
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: November 30, 2007

♦ ♦ ♦

The Texas Board of Criminal Justice (TBCJ or Board) has completed the review of Texas Administrative Code, Title 37, Part 6, Chapter 163, Community Justice Assistance Division Standards, §163.3, Objectives.

Notice of the review of §163.3 was published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5193). No comments were received in response to the notice.

The Board finds that the reasons for initially adopting §163.3 continue to exist and readopts this section without changes in accordance with the requirements of the Texas Government Code, §2001.039.

TRD-200705960
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: November 30, 2007

♦ ♦ ♦

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 33 in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7085).

The SBOE finds that the reasons for adopting 19 TAC Chapter 33 continue to exist. The SBOE received no comments related to the rule review requirement.

No changes are necessary to rules in 19 TAC Chapter 33, and the SBOE is proposing no amendments to these rules at this time.

This concludes the review of 19 TAC Chapter 33.

TRD-200706122
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: December 5, 2007

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §55.101(f)(2)

REQUEST FOR ADMINISTRATIVE REVIEW

Privacy Act of 1974 Notice. Disclosure of your social security number, and the social security numbers of your children, is required by federal law (42 USC 666). The Child Support Division will use these social security numbers for the purpose of establishing and enforcing support for you and your

TYPE OR PRINT CLEARLY:

I. NAME: _____ SOCIAL SECURITY NO.: _____

ADDRESS (include city, state, & ZIP Code): _____

_____

TELEPHONE NO.: ( ) _____

II. **ATTACH A COPY OF THE NOTICE YOU RECEIVED REGARDING:**
☐ INTERCEPTING YOUR FEDERAL INCOME TAX REFUND
☐ PROVIDING INFORMATION CONCERNING YOUR CHILD SUPPORT OBLIGATION TO A CONSUMER CREDIT REPORTING AGENCY

III. State your grounds for contesting the claimed amount of past-due child support (attach additional sheet if necessary):

_____

_____

IV. List the witnesses you intend to call in support of your contentions and the nature of their testimony. (attach additional sheet if necessary):

1. _____

_____

2. _____

_____

V. Describe the evidence you intend to introduce (court orders, payment records, canceled checks, etc.). **PLEASE ATTACH COPIES.**

_____

_____

Please note that only the evidence, testimony, witnesses and matters disclosed above may be considered at the hearing. **Texas Government Code § 559 gives you the right to review and request correction of information on this form.**

(Complete the following before a Notary Public only if you do not wish to participate in the hearing.)

STATE OF TEXAS
COUNTY OF _____
BEFORE ME, the undersigned authority, on this day personally appeared _____
_____**who being by me duly sworn upon oath deposed and stated that the statements and allegations he/she has made in the above and foregoing Request for Administrative Review are true and correct to the best of his/her knowledge and that any and all attachments thereto are original copies or true and accurate reproductions of the original copies.**

SUBSCRIBED AND SWORN TO BEFORE ME by _____

on this _____ **day of** _____, **20** ____, **to certify which witness my hand and official seal.**

_____
Notary Public in and for the State of Texas

September 2005 Form 3F006e

Attorney General Case #:

SOLICITUD PARA REVISION ADMINISTRATIVA

ESCRIBA A MAQUINA O IMPRIMA USANDO LETRAS DE MOLDE:

Aviso sobre el Acta de Privacidad del 1974. Conforme a la ley federal, es necesario que usted declare su número de Seguro Social y los números de Seguro Social de sus niños (42 USC 666). La División para la Manutención de Niños usará estos números del Seguro Social para establecer y hacer cumplir las órdenes de manutención para usted y su familia.

I. NOMBRE: _____ NO. DE SEG.SOC.: _____

DIRECCION (incluya cuidad, estado, y código postal):

_____

_____

NO. DE TELEFONO: ( ) _____

II. INCLUYA UNA COPIA DEL AVISO QUE RECIBIO ACERCA DE:

☐ LA INTERCEPCION DE SU CHEQUE DE REEMBOLSO POR SOBREPAGO DE IMPUESTOS FEDERALES

☐ LA ENTREGA DE INFORMACION A UNA AGENCIA DE REPORTES DE CRÉDITO ACERCA DE SU OBLIGACION DE MANUTENCION PARA NIÑOS

III. Declare sus razones por las cuales está en desacuerdo con la cantidad de pagos de manutención para niños señalada (incluya una página adicional si necesita más espacio):

_____

_____

IV. Incluya una lista de los testigos que usted presentará para apoyar su aserción, y la naturaleza del testimonio (incluya una página adicional si necesita más espacio):

1. _____

_____

2. _____

_____

V. Incluya una descripción detallada de las pruebas que usted presentará (decretos legales, comprobantes de paga, cheques cobrados, etc.). **POR FAVOR INCLUYA COPIAS.**

_____

_____

Por favor mantenga presente que, durante la audiencia, pueden ser consideradas solamente las pruebas, el testimonio y los asuntos declarados en esta solicitud. **Según el Código Gubernamental de Texas § 559 (Texas Government Code), usted tiene el derecho a revisar y solicitar que se hagan correcciones necesarias a la información incluida en este formulario.**

(Llene y firme la siguiente declarción ante un Notario Publico solamente si usted NO desea participar en la audiencia.)

ESTADO DE TEXAS
CONDADO DE _____

ANTE MI, la autoridad suscrita, hoy personalmente compareció _____, **quien, después de haber presentado su debido juramento, declaró y affirmó que las declaraciones y alegatos en la antecedente Solicitud Para Revisión Administrativa son verídicas y correctas, y que cualquier y todo anexo a la presente son copias originales o copias fieles y exactas de las copias originales.**

SUSCRITO Y JURADO ANTE MI por _____

este _____ **dia** _____**de** _____, **20** ____, **por lo que certifico la presente por mi firma y sello oficial.**

_____
Notario Público en y por el Estado de Texas

September 2005

Form 3F006s

Figure: 1 TAC §55.111

CAUSE NUMBER _____

IN THE INTEREST OF	§	IN THE _____COURT
	§	
	§	OF
CHILDREN	§	_____COUNTY, TEXAS

NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING

_____, Obligor, is hereby given notice pursuant to Texas Family Code Chapter 158, Subchapter D, that his employer will be required to withhold the amounts specified below for payment of his current support and periodic medical support obligation, and for any overdue support arrearage, as follows:

OBLIGOR: OBLIGEE:

CHILDREN

Current Support Due:	$ _____monthly
Periodic Medical Support Due:	$ _____ monthly
Total Arrearage, including $ _____accrued interest:	$_____
As of: _____	

Amounts to be withheld from Obligor's wages upon service of writ:

On Current Support:	$ _____monthly
On Periodic Medical Support:	$ _____monthly
On Arrearage Owed:	$ _____monthly

The writ or order to withhold from your wages applies to each current or subsequent employer or period of employment.

Your employer will be notified to begin deducting from your pay the amounts specified above if you do not contest this withholding by filing a Motion to Stay issuance and delivery of Judicial Writ of Withholding within 10 days after the receipt of this Notice.

Your grounds for successfully contesting the issuance of a writ of withholding are limited to a mistake of fact. If you claim you are not the person who owes the child support, are not in arrears, or the arrearage amount, including accrued interest, is incorrect, you can request a hearing by completing a Motion to Stay issuance and delivery of Judicial Writ of Withholding, and filing the Motion to Stay with the clerk of the court within 10 days of receipt of this Notice.

NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING

Your timely filing of the attached Motion to Stay will prevent the issuance and delivery of the Judicial Writ of Withholding to your employer until a hearing is held.

If you contest this withholding, you will be afforded an opportunity to present your case to the court within 30 days of your filing the Motion to Stay. The hearing will be limited to the disputed issues as stated on the Motion to Stay.

At the court hearing, the court will decide the contested delinquency, and will either enter an order for income withholding or decide that an order for income withholding as asked for in this Notice should not be entered.

_____has repeatedly failed to pay support in accordance with the underlying support order, and it is anticipated that additional arrears will accrue between the filing of the Notice and the date of a possible hearing. Should a Motion to Stay be filed, and a hearing conducted, the court will be requested to confirm all arrearage amounts then due.

VERIFICATION

I, the undersigned, swear under oath that the above Notice of Application for Judicial Writ of Withholding is true and correct.

_____

Signature

State of Texas

County of _____

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, by _____, this _____ day of _____, 20_____.

_____

CERTIFICATE OF NOTICE

I certify a copy of this Notice of Application for Judicial Writ of Withholding was mailed by first class mail to Obligor and Obligee on _____, _____ pursuant to Texas Family Code § 158.306.

_____
Name
Texas Bar No.
Address
Address
City / State / Zip
Telephone No.
Fax No.

NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING

Figure: 1 TAC §55.112

CAUSE NUMBER _____

IN THE INTEREST OF	§	IN THE _____COURT
	§	
	§	OF
CHILDREN	§	_____COUNTY, TEXAS

MOTION TO STAY

This Motion to Stay is brought by the undersigned person who contests the issuance and delivery of a Judicial Writ of Withholding. This motion was filed not later than the 10th day after receiving the Notice of Application for Judicial Writ of Withholding.

I state that the ground(s) for contesting the issuance of the Judicial Writ of Withholding is/are that:

[_] I am not the obligor, the person who is required by a Court Order to support the children named in the Notice of Judicial Writ of Withholding. Please explain:

[_] The existence or amount of arrearages (overdue support), including accrued interest, is incorrect. Please explain:

_____	_____
Your Name (typed or printed)	Driver License Number
_____	_____
Address	Phone Number
_____	_____
City, State, Zip Code	Employer Phone Number
_____	_____
Signature	Social Security Number

The information contained above is true and correct.

State of Texas

County of _____

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, by _____, this _____ day of _____, 20_____.

_____

MOTION TO STAY

INFORMATION REGARDING MOTION TO STAY
ISSUANCE AND DELIVERY OF JUDICIAL WRIT OF WITHHOLDING

1. You may file a Motion to Stay if you believe you have a valid reason to prevent a Judicial Writ of Withholding from being issued and delivered to your employer.

2. The grounds for successfully contesting issuance of the writ are:

   a. You are not the person who owes child support for the children named in the Notice of Application for Judicial Writ of Withholding.

   b. There is a dispute as to the existence or amount of arrearages, including accrued interest, as stated in the Notice of Application for Judicial Writ of Withholding.

3. In the event that this is the case, complete the Motion to Stay. Sign the Motion before a Notary Public. File this Motion, and pay all applicable filing fees, within ten days of the date you received the Notice of Application for Judicial Writ of Withholding by taking the Motion or mailing the Motion to the District Clerk's office at the address below. A Court hearing should be set within 30 days of you filing the Motion.

File at:

District Clerk
Address
City, State, Zip

Figure: 1 TAC §55.115

CAUSE NUMBER _____

IN THE INTEREST OF	§	IN THE _____
	§	
	§	OF
CHILDREN	§	_____COUNTY, TEXAS

Employer's Motion for Hearing on Applicability of Order/Notice

This Motion is brought by _____, Employer, in accordance with section 158.205 of the Texas Family Code, seeking a hearing on the Order/Notice to Withhold Income issued in this case on _____ and delivered to Employer on _____.

Employer should not be required to withhold in accordance with the Order/Notice to Withhold Income for Child Support because:

_____

_____

_____.

Under section 158.205 of the Texas Family Code, hearing on this Motion shall be held within fifteen days following filing of the Motion.

Obligor's employer:
Address:

_____
[Name]
Attorney for **[name]**
State Bar No.:
[Address]
[Telephone]
[Telecopier]

Notice of Hearing

The above Motion is set for hearing on _____ at _____ __. M. in **[designation and location of place of hearing]**.

SIGNED on _____.

_____
Judge or Clerk or Title IV-D Agency Representative

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on [**date**].

_____

[Name]
Attorney for [**name**]

Figure: 1 TAC §55.116(a)

CAUSE NUMBER _____

IN THE INTEREST OF	§	IN THE _____ JUDICIAL COURT
	§	
	§	OF
CHILDREN	§	_____ COUNTY, TEXAS

NOTICE OF ADMINISTRATIVE WRIT OF WITHHOLDING

_____, Obligor, is hereby given notice pursuant to Texas Family Code Chapter 158, Subchapter F, that his/her employer is immediately required to withhold the amounts specified below for payment of his/her current support and periodic medical support obligation, and for any overdue support arrearage, as follows:

OBLIGOR: OBLIGEE:

Obligor's Employer:

CHILDREN

Current Support Due:	$ _____monthly
Periodic Medical Support Due:	$_____ monthly
Total Arrearage, including $ ____accrued interest:	$ _____
As of:	

Amounts to be withheld from Obligor's wages upon service of writ:

On Current Support:	$_____ monthly
On Periodic Medical Support:	$_____ monthly
On Arrearage Owed:	$_____ monthly

NOTICE OF ADMINISTRATIVE WRIT OF WITHHOLDING

RIGHTS AND PROCEDURES

Attached to this notice is a copy of the Administrative Writ of Withholding issued in this matter.

_____may contest withholding on the grounds that the identity of the Obligor or the existence or amount of arrearages is incorrect by requesting a review by the Title IV-D agency, by telephonic conference or in person, at the telephone number and address below:

After a review, the Title IV-D agency may continue the attached writ in effect or may issue a new administrative writ modifying the amount to be withheld or terminating withholding.

If a review fails to resolve any issue in dispute, the obligor may file a motion with the court to withdraw the administrative writ and request a hearing with the court not later than the 30th day after receiving notice of the agency's determination. Income withholding may not be interrupted pending a hearing by the court.

Should a Motion to Withdraw be filed, and a hearing conducted, the court will be requested to confirm all arrearage amounts then due.

If this is a reissuance of an existing withholding order on file with the court of continuing jurisdiction and the amount to be withheld for an arrearage is not being adjusted, pursuant to Texas Family Code § 158.502, the preceding rights and procedures regarding contests, reviews and judicial intervention into this administrative withholding process do not apply.

Child Support Officer
Child Support Division
Address
City, State Zip
Telephone No. _____
Fax No. _____

CERTIFICATE OF NOTICE

I certify a copy of this Notice of Administrative Writ of Withholding was mailed by first class mail to Obligor and Obligee on _____ pursuant to Texas Family Code § 158.505.

Alicia G. Key
Deputy Attorney General for Child Support

NOTICE OF ADMINISTRATIVE WRIT OF WITHHOLDING

Figure: 1 TAC §55.116(b)

☐ ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT
ADMINISTRATIVE WRIT OF WITHHOLDING
☐ NOTICE OF AN ORDER TO WITHHOLD INCOME FOR CHILD SUPPORT

☐ Original ☐ Amended ☐ Termination Date: _____
☐ State/Tribe/Territory Texas
City/Co./Dist./Reservation _____
☐ Non-governmental entity or Individual _____
Case Number _____

_____
Employer's /Withholder's Name

_____
Employer's /Withholder's Address

_____
_____
_____
Employer's/Withholder's Federal EIN Number (if known)

RE: _____
Employee's/Obligor's Name (Last, First, MI)

_____
Employee's/Obligor's Social Security Number

_____
Employee's/Obligor's Case Identifier

_____
Obligee's Name (Last, First, MI)

ORDER INFORMATION: This document is based on the support or withholding order from _____.
You are required by law to deduct these amounts from the employee's/obligor's income until further notice.

$_____ Per _____ current child support
$_____ Per _____ past-due child support - **Arrears 12 weeks or greater?** ☐ **yes** ☐ **no**
$_____ Per _____ current cash medical support
$_____ Per _____ past-due cash medical support
$_____ Per _____ spousal support
$_____ Per _____ past-due spousal support
$_____ Per _____ other (specify) _____
for a total of $_____ Per _____ to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

$_____ per weekly pay period. **$_____ per semimonthly pay period (twice a month).**
$_____ per biweekly pay period (every two weeks). **$_____ per monthly pay period.**

REMITTANCE INFORMATION: When remitting payment, provide the pay date/date of withholding and the case identifier. If the employee's/obligor's principal place of employment is Texas, begin withholding no later than the first pay period following the date on which this Order/Notice was delivered to the employer. Send payment on the same day of the pay date/date of withholding. The total withheld amount, including your fee, cannot exceed the lesser of the applicable CCPA % or, for a Texas employee, the state limit of 50% of the employee's/obligor's aggregate disposable weekly earnings.

If the employee's/obligor's principal place of employment is not Texas, for limitations on withholding, applicable time requirements, and any allowable employer fees, follow the laws and procedures of the employee's/obligor's principal place of employment (see #3 and #9, ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS).

Make check payable to (Payee and Case Identifier):
OFFICE OF THE ATTORNEY GENERAL
AG Case #
Cause #

Send check to:

If remitting payment by EFT/EDI, call 1-877-474-4463 before first submission. Use this FIPS code: _____.
Bank routing number: _____ **Bank account number:** _____.

If this is an Order/Notice to Withhold:

Print Name: Alicia G. Key

Title of Issuing Official: Deputy Attorney General of Child Support Division

Alicia G. Key

Signature and Date _____

If this is a Notice of an Order to Withhold:

Print Name: _____

Title (if appropriate) _____

Signature and Date _____

☒ IV-D Agency ☐ Court ☐ Attorney ☐ Individual ☐ Private Entity
☐ Attorney with authority under state law to issue order/notice.

NOTE: Non-IV-D Attorneys, individuals, and non-governmental entities must submit a Notice of an Order to Withhold and include a copy of the income withholding order unless, under a state's law, an attorney in that state may issue an income withholding order. In that case, the attorney may submit an Order/Notice to Withhold and include a copy of the state law authorizing the attorney to issue an income withholding order/notice.

IMPORTANT: The person completing this form is advised that the information on this form may be shared with the obligor.
April 2007

OMB 0970-0154
Form 3N001

ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS

☐ If checked, you are required to provide a copy of this form to your employee/obligor. If your employee works in a state that is different from the state that issued this order, a copy must be provided to your employee/obligor even if the box is not checked.

1. **Priority:** Withholding under this Order or Notice has priority over any other legal process under state law (or tribal law, if applicable) against the same income. If there are federal tax levies in effect, please notify the contact person listed below. (See 10 below.)

2. **Combining Payments:** You may combine withheld amounts from more than one employee's/obligor's income in a single payment to each agency/party requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

3. **Reporting the Paydate/Date of Withholding:** You must report the paydate/date of withholding when sending the payment. The paydate/date of withholding is the date on which the amount was withhold from the employee's wages. You must comply with the law of the state of employee's/obligor/s principal place of employment with respect to the time periods within which you must implement the withholding and forward the support payments.

4. **Employee/Obligor with Multiple Support Withholdings:** If there is more than one Order or Notice against this employee/obligor and you are unable to honor all support Orders or Notices due to federal, state, or tribal withholding limits, you must follow the state or tribal law/procedure of the employee's/obligor's principal place of employment. You must honor all Orders or Notices to the greatest extent possible. (See 9 below.)

5. **Termination Notification:** You must promptly notify the Child Support Enforcement (IV-D) Agency and/or the contact person listed below when the employee/obligor no longer works for you. Please provide the information requested and return a complete copy of this Order or Notice to the Office of the Attorney General, Child Support Division, Central File Maintenance, P O Box 12048, Austin, TX 78711-2048; and/or the contact person listed below. (See 10 below.) You may submit the termination online via the Internet at http://employer.oag.state.tx.us.

THE EMPLOYEE/OBLIGOR NO LONGER WORKS FOR: _____
EMPLOYEE'S/OBLIGOR'S NAME: _____ **CASE IDENTIFIER: AG #** _____.
DATE OF SEPARATION FROM EMPLOYMENT: _____
LAST KNOWN ADDRESS: _____
NEW EMPLOYER/ADDRESS: _____

6. **Lump Sum Payments:** You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the Child Support Enforcement (IV-D) Agency.

7. **Liability:** If you have any doubts about the validity of the Order or Notice, contact the agency or person listed below under 10. If you fail to withhold income as the Order or Notice directs, you are liable for both the accumulated amount you should have withhold from the employee's/obligor's income and any other penalties set by state or tribal law/procedure.

_____
_____

8. **Anti-discrimination:** You are subject to a fine determined under state or tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.

_____
_____

9. **Withholding Limits:** For state orders, you may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. §1673 (b)); or 2) the amounts allowed by the state of the employee's/obligor's principal place of employment. The federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: state, federal, local taxes, Social Security taxes, statutory pension contributions, and Medicare taxes. The Federal CCPA limit is 50% of the ADWE for child support and alimony, which is increased by 1) 10% if the employee does not support a second family; and/or 2) 5% if arrears greater then 12 weeks.
For tribal orders, you may not withhold more than the amounts allowed under the law of the issuing tribe. For tribal employers who receive a state order, you may not withhold more than the amounts allowed under the law of the state that issued the order.

Child(ren)'s Name(s)

10. If you or your employee/obligor have any questions, contact _____at _____ , by telephone at _____, by Fax at _____ or by internet for employees at http://childsupport.oag.state.tx.us or for employers at http://employer.oag.state.tx.us.

IMPORTANT: The person completing this form is advised that the information on this form may be shared with the obligor.
April 2007

OMB 0970-0154
Form 3N001

Figure: 1 TAC §55.117

CAUSE NUMBER _____

IN THE INTEREST OF	§	IN THE _____ JUDICIAL COURT
	§	
	§	OF
CHILDREN	§	_____ COUNTY, TEXAS

REQUEST FOR ISSUANCE OF ORDER

TO THE CLERK OF THE COURT:

_____, pursuant to Texas Family Code Chapter 158, requests that you issue a certified copy of the **ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT (EMPLOYER'S ORDER)**, concerning _____, Obligor, signed by the Court on _____, _____, to this employer:

EMPLOYER NAME
Attention:
Address
City, State, Zip

Fax:

New Employer Information:

_____
_____
_____
_____

CLERK'S CERTIFICATE OF NOTICE TO EMPLOYER

Pursuant to Texas Family Code Chapter 158, a certified copy of the ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT (EMPLOYER'S ORDER) signed by the Court on _____ was mailed on this date to the above-named employer.

Signed this _____ day of _____, _____.
District Clerk of _____ County, Texas

By:_____, Deputy
Certified Mail No:_____ (Return Receipt Requested)

REQUEST FOR ISSUANCE OF ORDER

Figure: 1 TAC §55.118

☐ ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT
ADMINISTRATIVE WRIT OF WITHHOLDING
☐ NOTICE OF AN ORDER TO WITHHOLD INCOME FOR CHILD SUPPORT

☐ Original ☐ Amended ☐ Termination Date: _____
☐ State/Tribe/Territory _____
City/Co./Dist./Reservation _____
☐ Non-governmental entity or Individual _____
Case Number _____

_____
Employer's /Withholder's Name

_____
Employer's /Withholder's Address

_____
_____
_____
_____
Employer's/Withholder's Federal EIN Number (if known)

RE: _____
Employee's/Obligor's Name (Last, First, MI)

_____
Employee's/Obligor's Social Security Number

_____
Employee's/Obligor's Case Identifier

_____
Obligee's Name (Last, First, MI)

ORDER INFORMATION: This document is based on the support or withholding order from _____.
You are required by law to deduct these amounts from the employee's/obligor's income until further notice.

$_____ Per _____ current child support
$_____ Per _____ past-due child support - **Arrears 12 weeks or greater?** ☐ **yes** ☐ **no**
$_____ Per _____ current cash medical support
$_____ Per _____ past-due cash medical support
$_____ Per _____ spousal support
$_____ Per _____ past-due spousal support
$_____ Per _____ other (specify) _____
for a total of $_____ Per _____ to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

$_____ per weekly pay period.
$_____ per biweekly pay period (every two weeks).
$_____ per semimonthly pay period (twice a month).
$_____ per monthly pay period.

REMITTANCE INFORMATION: When remitting payment, provide the pay date/date of withholding and the case identifier. If the employee's/obligor's principal place of employment is Texas, begin withholding no later than the first pay period following the date on which this Order/Notice was delivered to the employer. Send payment on the same day of the pay date/date of withholding. The total withheld amount, including your fee, cannot exceed the lesser of the applicable CCPA % or, for a Texas employee, the state limit of 50% of the employee's/obligor's aggregate disposable weekly earnings.

If the employee's/obligor's principal place of employment is not Texas, for limitations on withholding, applicable time requirements, and any allowable employer fees, follow the laws and procedures of the employee's/obligor's principal place of employment (see #3 and #9, ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS).

Make check payable to (Payee and Case Identifier):

Send check to:

If remitting payment by EFT/EDI, call _____ before first submission. Use this FIPS code: _____.
Bank routing number: _____ **Bank account number:** _____.

If this is an Order/Notice to Withhold:

Print Name: _____

Title of Issuing Official: _____

Signature and Date _____

☐ IV-D Agency ☐ Court
☐ Attorney with authority under state law to issue order/notice.

If this is a Notice of an Order to Withhold:

Print Name: _____

Title (if appropriate) _____

Signature and Date _____

☐ Attorney ☐ Individual ☐ Private Entity

NOTE: Non-IV-D Attorneys, individuals, and non-governmental entities must submit a Notice of an Order to Withhold and include a copy of the income withholding order unless, under a state's law, an attorney in that state may issue an income withholding order. In that case, the attorney may submit an Order/Notice to Withhold and include a copy of the state law authorizing the attorney to issue an income withholding order/notice.

IMPORTANT: The person completing this form is advised that the information on this form may be shared with the obligor.
April 2007

OMB 0970-0154

ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS

☐ If checked, you are required to provide a copy of this form to your employee/obligor. If your employee works in a state that is different from the state that issued this order, a copy must be provided to your employee/obligor even if the box is not checked.

1. **Priority:** Withholding under this Order or Notice has priority over any other legal process under state law (or tribal law, if applicable) against the same income. If there are federal tax levies in effect, please notify the contact person listed below. (See 10 below.)

2. **Combining Payments:** You may combine withheld amounts from more than one employee's/obligor's income in a single payment to each agency/party requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

3. **Reporting the Paydate/Date of Withholding:** You must report the paydate/date of withholding when sending the payment. The paydate/date of withholding is the date on which the amount was withhold from the employee's wages. You must comply with the law of the state of employee's/obligor/s principal place of employment with respect to the time periods within which you must implement the withholding and forward the support payments.

4. **Employee/Obligor with Multiple Support Withholdings:** If there is more than one Order or Notice against this employee/obligor and you are unable to honor all support Orders or Notices due to federal, state, or tribal withholding limits, you must follow the state or tribal law/procedure of the employee's/obligor's principal place of employment. You must honor all Orders or Notices to the greatest extent possible. (See 9 below.)

5. **Termination Notification:** You must promptly notify the Child Support Enforcement (IV-D) Agency and/or the contact person listed below when the employee/obligor no longer works for you. Please provide the information requested and return a complete copy of this Order or Notice to the Office of the Attorney General, Child Support Division, Central File Maintenance, P O Box 12048, Austin, TX 78711-2048; and/or the contact person listed below. (See 10 below.) You may submit the termination online via the Internet at _____.

THE EMPLOYEE/OBLIGOR NO LONGER WORKS FOR: _____
EMPLOYEE'S/OBLIGOR'S NAME: _____ **CASE IDENTIFIER:** _____.
DATE OF SEPARATION FROM EMPLOYMENT: _____
LAST KNOWN ADDRESS: _____
NEW EMPLOYER/ADDRESS: _____

6. **Lump Sum Payments:** You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the Child Support Enforcement (IV-D) Agency.

7. **Liability:** If you have any doubts about the validity of the Order or Notice, contact the agency or person listed below under 10. If you fail to withhold income as the Order or Notice directs, you are liable for both the accumulated amount you should have withhold from the employee's/obligor's income and any other penalties set by state or tribal law/procedure.

_____
_____

8. **Anti-discrimination:** You are subject to a fine determined under state or tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.

_____
_____

9. **Withholding Limits:** For state orders, you may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. §1673 (b)); or 2) the amounts allowed by the state of the employee's/obligor's principal place of employment. The federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: state, federal, local taxes, Social Security taxes, statutory pension contributions, and Medicare taxes. The Federal CCPA limit is 50% of the ADWE for child support and alimony, which is increased by 1) 10% if the employee does not support a second family; and/or 2) 5% if arrears greater then 12 weeks.
For tribal orders, you may not withhold more than the amounts allowed under the law of the issuing tribe. For tribal employers who receive a state order, you may not withhold more than the amounts allowed under the law of the state that issued the order.

Child(ren)'s Name(s)

10. If you or your employee/obligor have any questions, contact _____ at _____, by telephone at _____, by Fax at _____ or by internet for employees at _____ or for employers at _____.

IMPORTANT: The person completing this form is advised that the information on this form may be shared with the obligor.
April 2007

OMB 0970-0154

Figure: 1 TAC §55.119(a)

Notice of Child Support Lien

TO:
(Name/Address of recorder or
asset holder)

OBLIGOR:
(Name, Address/DOB, SSN)

FROM:
(IV-D Agency /Claimant)

OBLIGEE:

IV-D Case Number:

This lien results from a child support order, entered on _____ by _____ *Judicial Court,* _____ *COUNTY, TEXAS* in tribunal number _____.

As of _____, the obligor owes unpaid support in the amount of $ _____. This judgment may be subject to interest.

Prospective amounts of child support, not paid when due, are judgments that are added to the lien amount. This lien attaches to all non-exempt real and/or personal property of the above-named obligor which is located or existing within the State/county of filing, including any property specifically described below.

Specific description of property:

All aspects of this lien, including its priority and enforcement, are governed by the law of the State where the property is located. An Obligor must follow the laws and procedures of the State where the property is located or recorded. An obligor may also contact the entity sending the lien. This lien remains in effect until released or withdrawn by the obligee or in accordance with the laws of the State where the property is located.

As an authorized agent of a State or Tribal, or subdivision of a State or Tribal, agency responsible for implementing the child support enforcement program set forth in Title IV, Part D, of the Federal Social Security Act (42 U.S.C. 651 et seq.), I have authority to file this child support lien in any State, or U.S. Territory. For additional information regarding this lien, including the pay-off amount, please contact the authorized agency and reference its case number, both listed above.

_____ _____

Date Authorized Agent

_____

Print Name, e-mail address, phone and fax number

Notice: Respondents are not required to respond to this information collection unless it displays a valid OMB control number. The average burden for responding to this information collection is estimated at 30 minutes. If you believe this estimate is inaccurate, or if you have ideas to reduce this burden, please provide comment to the issuing agency.

OMB Control #: 0970-0153 Expiration Date: 01/31/2008

Figure: 1 TAC §55.119(b)

CAUSE NUMBER _____

IN THE INTEREST OF	§	IN THE _____COURT
	§	
	§	OF
CHILDREN	§	_____COUNTY, TEXAS

RELEASE OF CHILD SUPPORT LIEN

To the County Clerk: _____ County, Texas

And To: _____

Pursuant to Texas Family Code § 157.322, all child support arrearages due, pursuant to the child support lien described below, have been paid in full. This release constitutes a complete release of any claim the Office of the Attorney General of the State of Texas has under said child support lien.

Court of Continuing Jurisdiction: _____ *Judicial Court,* _____*COUNTY, TEXAS*
Style:

Cause Number:

Obligor:
Date of Birth:
DL No.:
Social Security No.:

Obligee:

Date of child support lien being released: _____, _____.

I solemnly affirm and declare the foregoing to be a true statement.

_____

Attorney
State Bar Number
Address
City State
Telephone No.
Fax No.

State of Texas
County of _____

Before me, the undersigned notary public, on this day personally appeared_____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

_____

Notary Public's Signature

Figure: 1 TAC §55.119(c)

CAUSE NUMBER _____

IN THE INTEREST OF	§	IN THE _____COURT
	§	
	§	OF
CHILDREN	§	_____COUNTY, TEXAS

PARTIAL RELEASE OF CHILD SUPPORT LIEN

To the County Clerk: _____ County, Texas

And To: _____, Obligor

Court of Continuing Jurisdiction: _____ *Judicial Court,* _____ *COUNTY, TEXAS*
Style:

Cause Number:

Obligor:
Date of Birth:
DL No.:
Social Security No.:

Obligee: _____

Date of child support lien being released: _____, _____.

PROPERTY TO WHICH THIS RELEASE APPLIES

Pursuant to Texas Family Code § 157.321, the Office of the Attorney General of the State of Texas releases to Obligor or *his/her* designee the specific property described below:

This partial release of lien applies only to the property described above, does not constitute a release of as to any portion of the child support arrears not otherwise satisfied, and does not constitute a release of Obligor's property in the hands of any person other than the above addressee. Additionally, this partial release is expressly conditioned upon the closing of the sale of this real property to _____, and shall be void in the event that _____ retains or ever again acquires an interest in the property.

I solemnly affirm and declare the foregoing to be a true statement.

_____
Attorney
State Bar Number
Address
City, State, Zip Code
Telephone No.
Fax No.

State of Texas
County of _____

Before me, the undersigned notary public, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

_____
Notary Public's Signature

Figure: 1 TAC §55.141(e)

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT
CHILD SUPPORT DIVISION

Date: _____

_____

_____

_____

re: ADMINISTRATIVE REVIEW -
DISTRIBUTION OF CHILD SUPPORT PAYMENTS

Dear _____:

If you are not satisfied with the distribution explanation provided on the:

- Form 1756, Distribution Details of Child Support Payments or
- Monthly Report of Support Collected

you have the right to request an Administrative Review.

To request an Administrative Review, you must:

- complete page 2 of this form, which is titled "REQUEST FOR HEARING"
- sign, date and return the completed Request For Hearing to the local office in the enclosed envelope

Upon receipt of your completed request, the Child Support Officer (CSO) assigned to your case will forward your Form 1757 and the collection and distribution information on your case to the Coordinator for the Office of the Administrative Law Judge, who will schedule an Administrative Review hearing and mail a notice of hearing to you.

The Administrative Law Judge will conduct a formal hearing, in which you may participate, but your participation is not required. Although an attorney will *not* be provided to assist you, you *may* obtain an attorney of your own to represent you at the hearing. Evidence may be submitted by testimony, sworn affidavits or other documents. The Administrative Law Judge will issue an administrative review decision based solely on the evidence submitted during the hearing. **Note: This process may require at least two months.**

Texas Government Code § 559 gives you the right to review and request correction of information on this form.

Form 1757
January 2002

An Equal Employment Opportunity Employer · Printed on Recycled Paper

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT
CHILD SUPPORT DIVISION

Docket No. _____

IN THE MATTER OF	§	BEFORE THE OFFICE
	§	OF THE
_____	§	ATTORNEY GENERAL

REQUEST FOR HEARING

This request for hearing form should be completely filled out by you or your lawyer if you wish to have a hearing to contest the distribution of your child support payments. If you request a hearing you will be notified of the date and time your hearing has been scheduled.

1. My name, address, telephone number and Social Security number, which I have listed below, are true and correct. I understand that if there are any changes I must immediately notify the Coordinator for the Office of the Administrative Law Judge. I understand that my failure to supply those changes to the Coordinator may result in my failing to receive notices or other pleadings and documents.

2. I am contesting the Agency's distribution/retention of the child support payments collected in my case for the following reasons: (use additional sheets as necessary and attach supporting evidence) _____

_____

_____

_____

_____

3. I understand that:
   a. a decision will be made by the agency after a hearing is held based on the testimony and evidence at the hearing;
   b. I will receive written notice of the decision and the reasons for the decision; and
   c. the Office of the Attorney General cannot represent me or give me legal advice; I have the right to hire my own lawyer to represent me at the hearing.

[IF YOU ARE REPRESENTED BY A LAWYER, PLEASE FILL IN THE INFORMATION BELOW. ALL NOTICES AND LETTERS WILL BE SENT TO YOUR LAWYER.]

_____
Lawyer's Name

_____
Lawyer's Address

_____
Lawyer's Phone Number

4. Please read and check one of the following choices for your hearing:

[ ] **IN PERSON** - I will be present for the in-person hearing set in this case. I understand that the hearing will be held at the Office of the Attorney General, 5500 E. Oltorf Austin, Texas, unless a different address is stated in the Notice of Hearing. The Coordinator will send the Notice of Hearing to the address I listed below when the hearing date is set. **OR**

[ ] **TELEPHONIC** - I request that the hearing on the proposed intercept of my child support payments be conducted by telephone. I will be at the following telephone number for the telephone hearing: (___)_____. I understand that if I am at a different phone number on the date of the hearing, it is my responsibility to notify the Coordinator of the number where I may be reached. I understand that my request for hearing may be dismissed if I am not available for the telephonic hearing at the telephone number I have designated when the Administrative Law Judge calls.

5. I am sending the original of this Request for Hearing to my local child support office who will in turn forward all documentation to the Coordinator for filing.

MY SIGNATURE BELOW IS THE ACKNOWLEDGMENT THAT I HAVE READ THIS REQUEST FOR HEARING AND THAT ALL THE RESPONSES ARE TRUE AND CORRECT.

_____ Signature	_____ Date
_____ Printed Name	_____ Social Security Number
_____ Address	_____ Home Phone Number
_____ City State Zip	_____ Daytime Phone Number

This request for hearing must be returned to the **local child support office** handling your case at the address below:

_____ Local Office

_____ Telephone Number: _____

_____

Privacy Act of 1974 Notice. Disclosure of your social security number, and the social security numbers of your children, is required by federal law (42 USC 666). The Child Support Division will use these social security numbers for the purpose of establishing and enforcing support for you and your family.

Form 1757 - Page 2

Figure: 1 TAC §55.203(a)

Docket No.

IN THE MATTER OF	§	BEFORE THE IV-D AGENCY
	§	OF THE
_____ (OBLIGOR)	§	STATE OF TEXAS

NOTICE OF FILING OF PETITION TO SUSPEND LICENSE

TO: Obligor
Address

Type of License	License No.	Licensing Authority

1. A Petition to Suspend License has been filed. A copy is attached.

2. You have the right to a hearing before the Attorney General.

3. The deadline for requesting a hearing is no later than the 20th day after the date of service of this notice.

4. A Request for Hearing Form is provided.

5. Retain all these documents that were served. Keep them in the same order as they were when received. They will be used at the hearing. It is your responsibility to have every document with you at the time of the hearing.

6. AN ACTION TO SUSPEND ONE OR MORE LICENSES ISSUED TO YOU HAS BEEN FILED AS PROVIDED BY CHAPTER 232, TEXAS FAMILY CODE. YOU MAY EMPLOY AN ATTORNEY TO REPRESENT YOU IN THIS ACTION. IF YOU OR YOUR ATTORNEY DO NOT REQUEST A HEARING BEFORE THE 21ST DAY AFTER THE DATE OF SERVICE OF THIS NOTICE, AN ORDER OF SUSPENDING YOUR LICENSE MAY BE RENDERED.

This notice may be served by any sheriff or constable or other person authorized by law.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of the Office of the Attorney General, this the _____ day of _____, _____.

SEAL

_____
Coordinator
Office of the Attorney General
Child Support Division
P.O. Box 12017 MC 039-3
Austin, TX. 78711-2017
Phone (512) 460-6046

Figure: 1 TAC §55.303(c)(1)(B) **Texas Employer New Hire Reporting Form**

Submit within 20 calendar days of new employee's first day of work to:
ENHR Operations Center, P.O. Box 149224
Austin, TX 78714-9224
Phone: 1-800-850-6442 FAX: 1-800-732-5015
Online: http://employer.oag.state.tx.us

To ensure the highest level of accuracy, please print neatly in capital letters and avoid contact with the edges of the boxes. The following will serve as an example:

A	B	C

1	2	3

Employer Information

1. Federal Employer ID Number (FEIN):
Please use the same FEIN that appears on quarterly wage reports.

2. State Employer ID Number (Optional):

3. Employer Name:

4. Employer Address (Please indicate the address where the Income Withholding Orders should be sent):

5. Employer City (if US):

6. State (if US):

7. ZIP Code (if US): –

8. Province/Region (if foreign):

9. Country (if foreign):

10. Postal Code (if foreign):

11. Employer Telephone (Optional):

12. Employer FAX (Optional):

13. New Hire Contact Person (Optional):

Employee Information

14. Social Security Number (SSN):

15. First Day of Work (MM/DD/YYYY) (Optional):

16. Employee First Name:

17. Employee Middle Name:

18. Employee Last Name:

19. Employee Home Address:

20. Employee City (if US):

21. State (if US):

22. ZIP Code (if US): –

23. Province/Region (if foreign):

24. Country (if foreign):

25. Postal Code (if foreign):

26. State Where Employee Was Hired (Optional):

27. Employee DOB (MM/DD/YYYY) (Optional):

28. Employee's Salary (Dollars and Cents) (Optional):

29. Salary Frequency (Check One ONLY) (Optional):
☐ Hourly ☐ Weekly ☐ Biweekly ☐ Semi-Monthly ☐ Monthly ☐ Annually

REV 8/07

ENHR RPT FORM

INSTRUCTIONS FOR COMPLETING THE TEXAS EMPLOYER NEW HIRE REPORTING FORM

The purpose of the Texas New Hire Reporting Form is to allow employers to fulfill new hire reporting requirements. You may enter your employer information and photocopy a supply and then enter employee information on the copies.

REPORTING OF NEW HIRES IS REQUIRED:

All required items (numbers 1, 3, 4, 5, 6, 7, 14, 16, 17, 18, 19, 20, 21, 22) on this form must be completed.

Box 1: Federal Employer ID Number (FEIN). Provide the 9-digit employer identification number that the federal government assigns to the employer. This is the same number used for federal tax reporting. Please use the same FEIN that appears on quarterly wage reports.

Box 2: State Employer ID Number (Optional). Identification number assigned to the employer by the Texas Workforce Commission.

Box 3: Employer Name. The employer name as listed on the employee's W4 form. Please do not provide more than one employer name (for example, "ABC, Inc DBA. John Doe Paint and Body Shop" is not correct).

Box 4: Employer Address. Please indicate the address where the Income Withholding Orders should be sent. Do not provide more than one address (for example, P.O. Box 123, 1313 Mockingbird Lane is not correct).

Box 8: Employer Province/Region (if foreign). Provide this information if the employer address is not in the United States.

Box 9: Employer Country (if foreign). Provide the two letter country abbreviation if the employer address is not in the United States.

Box 10: Postal Code (if foreign). Provide the postal code if the employer address is not in the United States.

Box 13: New Hire Contact Person (Optional). Providing the name of a contact staff person will facilitate communication between the employer and the Texas Employer New Hire Reporting Program.

Box 15: First Day of Work (Optional). List the date in month, day and year order. Use four digits for the year (for example, 2001). This should be the first day that services are performed for wages by an individual. If you are reporting a rehire (where a new W-4 is prepared) use the return date, not the original date of hire.

Box 23: Employee Province/Region (if foreign). Provide this information if the employee does not reside in the United States.

Box 24: Employee Country (if foreign). Provide the two letter country abbreviation if the employee address is not in the United States.

Box 25: Postal Code (if foreign). Provide the postal code if the employee address is not in the United States.

Box 26: State Where Employee was Hired. Use the abbreviation recognized by the U.S. Postal Service for the state in which the employee was hired.

Box 27: Employee DOB (Date of Birth) (Optional). List the date in month, day and year order. Use four digits for the year (for example, 1985).

Box 28: Employee Salary (Optional). Enter employee's exact wages in dollars and cents. This should correspond to the salary pay frequency indicated in Box 29.

Box 29: Salary (Check One ONLY) (Optional). Check the appropriate box relating to the employee's salary pay frequency. Check " Bi-weekly" if the salary is based on 26 pay periods. Check "Semi-monthly" if the salary is based on 24 pay periods. Check "Annually" if salary payment is a one-time distribution.

SUBMISSION OF NEW HIRE REPORTS. The Texas Employer New Hire Reporting Program offers a variety of methods that employers can use to submit new hire reports. For further information on which method may be best for you, call 1-800-850-6442. Employers are encouraged to keep photocopies or electronic records of all reports submitted. When the form is completed, send it to the Texas Employer New Hire Reporting Program using one of the following means:

- **FAX:** 1-800-732-5015
- **U.S. Mail:**

ENHR Operations Center
P.O. Box 149224
Austin, TX 78714-9224

- **Telephone Submissions:** 1-800-850-6442
- **Internet Submissions: http://employer.oag.state.tx.us**

Employers must provide all of the required information within 20 calendar days of the employee's first day of work to be in compliance. State law provides a penalty of $25 for each employee an employer knowingly fails to report, and a penalty of $500 for conspiring with an employee to 1) fail to file a report or 2) submit a false or incomplete report.

REV 08/07

ENHR RPT FORM

Figure: 1 TAC §55.408(c)

PARENT SURVEY ON THE ACKNOWLEDGMENT OF PATERNITY (AOP) MANDATED BY LAW

This Survey should be completed after the AOP has been signed or a person has declined to sign the AOP.

Hospital/Entity *Name & Location*: _____ Entity Code: _____

Child's Name: _____ Date of Birth: _____

Please read and initial the following:

STATEMENTS	MOTHER	FATHER
1. I was given the opportunity to sign an Acknowledgment of Paternity.	_____	_____
2. I did **not** complete an Acknowledgment of Paternity.	_____	_____
3. I was made aware that I could have a DNA test done before I signed the AOP.	_____	_____
4. I was given written and oral information regarding the benefits, rights and responsibilities of an AOP, an explanation of those rights and responsibilities and information about child support.	_____	_____
5. I was given information that the biological father who signed this AOP will have all legal rights and duties of a parent. This may include the legal responsibility for financial and medical support of the child named in this AOP.	_____	_____
6. I was given information that I have 60 days from the date the AOP is filed to change my mind and file a rescission in court.	_____	_____
7. I was given information that after 60 days I may challenge the AOP in court and must prove fraud, duress, or material mistake of fact.	_____	_____
8. I was given information that after four years from the date the AOP is filed, I can **no** longer challenge the AOP. Minors may challenge until 4 years after they become an adult.	_____	_____
9. I was given a completed copy of the AOP with the benefits, rights, and responsibilities on the back.	_____	_____

Mother's Printed Name: _____ ID Type: _____

Mother's Signature: _____ Phone Number: _____

Father's Printed Name: _____ ID Type: _____

Father's Signature: _____ Phone Number: _____

Certified Staff Signature: _____ Date: _____

Presumed Father: (After you read the Denial of Paternity and Change of Mind sections of the rights and responsibilities, please read the statement below and initial.)

After I have signed the Denial of Paternity and it has been filed with the Vital Statistics Unit, my legal rights and responsibilities to this child will be terminated. I have 60 days from the date the AOP is filed to change my mind and file a rescission in court. After 60 days, I may challenge the AOP in court and must prove fraud, duress, or material mistake of fact. After four years from the date the AOP is filed, I can **no** longer challenge the AOP. ____

Presumed Father's Printed Name: _____ ID Type: _____

Presumed Father's Signature: _____ Phone Number: _____

Revised 05/16/2007

Form 1798

ENCUESTA SOBRE EL RECONOCIMIENTO DE PATERNIDAD (AOP) ORDENADA EN CONFORMIDAD CON LA LEY

Esta encuesta debe ser llenada después de que el Reconocimiento de Paternidad (AOP) ha sido firmado o después de que la persona se nego a firmarlo.

Hospital/Entidad *Nombre y ubicación:*_____ Código de la Entidad:_____
Nombre del Niño(a):_____ Fecha de Nacimiento:_____

Favor de leer y firmar con iniciales las siguientes declaraciones:

DECLARACIÓN	MAMÁ	PAPÁ
1. Me dieron la oportunidad de firmar un formulario de Reconocimiento de Paternidad (Acknowledgement of Paternity, AOP, en inglés).	_____	_____
2. No llene un Reconocimiento de Paternidad (AOP).	_____	_____
3. Me han informado que me puedo someter a una prueba genética de ADN antes de firmar el Reconocimiento de Paternidad (AOP).	_____	_____
4. Me dieron información por escrito y oral con respecto a los beneficios, derechos y responsabilidades de un AOP, una explicación de tales derechos y responsabilidades e información sobre la manutención de niños.	_____	_____
5. Recibí información indicando que el padre biológico que firmó este AOP tendrá todos los derechos y deberes legales de un padre. Esto puede incluir la responsabilidad legal de manutención financiera y manutención médica del niño nombrado en este AOP.	_____	_____
6. Recibí información indicando que tengo 60 días a partir de la fecha que el AOP es registrado para cambiar de opinión y presentar una rescisión ante la corte.	_____	_____
7. Recibí información indicando que después de 60 días, puedo desafiar el AOP ante la corte y debo comprobar fraude, coacción, o error material de un hecho.	_____	_____
8. Recibí información indicando que después de 4 años a partir de la fecha que fue presentado el AOP, ya **no** puedo desafiar el AOP. Los menores tienen hasta 4 años después de que sean adultos para desafiar el AOP.	_____	_____
9. Me dieron una copia del AOP llenado, con las ventajas, derechos, y responsabilidades en la parte posterior.	_____	_____

Nombre de la madre en letra de molde:_____ Identificación:_____

Firma de la Madre:_____ Número de teléfono:_____

Nombre del padre en letra de molde:_____ Identificación:_____

Firma del Padre:_____ Número de teléfono:_____

Firma del personal certificado:_____ Fecha:_____

El presunto padre: *(Después de leer las secciones: Negación de Paternidad (Denial of Paternity) y Cambio de Opinión (Change of Mind), en los derechos y responsabilidades, lea esta declaración y firme con sus iniciales.)*

Después de que yo haya firmado la Negación de Paternidad y sea presentada ante la Unidad de Estadísticas Vitales (Vital Statistics Unit), mis derechos y responsabilidades legales hacia este niño serán terminados. Tengo 60 días a partir de la fecha que el AOP es registrado para cambiar de opinión y presentar una rescisión ante la corte. Después de 60 días, puedo desafiar el AOP ante la corte y debo comprobar fraude, coacción, o error material de un hecho. Después de 4 años a partir de la fecha que fue presentado el AOP, ya no puedo desafiar el AOP. _____

Nombre del presunto padre en letra de molde:_____ Identificación:_____

Firma del presunto padre:_____ Número de teléfono:_____

Revised 05/16/2007 Form 1798

Figure: 25 TAC §289.252(jj)(2)

Radionuclides	Limit	Unsealed Sources			Sealed Sources
		10^3	10^4	10^5	10^{10}
Ce-142, Pr-141, Nd-144, Nd-145, Sm-146, Sm-147, Sm-148, Gd-148, Gd-150, Gd-151, Gd-152, Tb-159, Dy-154, Dy-156, Ho-165, Hf-174, W-180, Pt-190, Pb-210, Bi-209, Bi-209m, Po-208, Po-209, Po-210, Ra-226, Ac-227, Th-228, Th-229, Th-230, Pa-231, U-232, U-233, U-234, U-235, U-236, Np-235, Np-237, Pu-236, Pu-238, Pu-239, Pu-240, Pu-241, Pu-242, Pu-244, Am-241, Am-242m, Am-243, Cm-242, Cm-243, Cm-244, Cm-245, Cm-246, Cm-247, Cm-248, Bk-247, Bk-249, Cf-248, Cf-249, Cf-250, Cf-251, Cf-252, Es-254, Any Alpha-emitting radionuclide not listed above or mixtures of unknown alpha emitters of unknown composition	0.01 µCi	.01 mCi	0.1 mCi	1.0 mCi	100 Ci
Be-10, Al-26, Si-32, Ar-39, Ar-42, K-40, Ca-45, Ca-48, Ti-44, V-49, V-50, Fe-60, Zn-70, Ge-68, Ge-76, Kr-81, Sr-90, Zr-96, Mo-100, Tc-98, Rh-101, Rh-102, Pd-107, Ag-108m, Cd-113m, Cd-116, Sn-121m, Sn-123, Sn-124, Sn-126, Te-121m, Te-123, Te-130, I-129, La-137, La-138, Ce-139, Nd-150, Pm-143, Pm-144, Pm-145, Pm-146, Sm-145, Eu-150, Tb-157, Tb-158, Dy-159, Ho-166m, Lu-173, Lu-174, Lu-174m, Lu-175, Lu-176, Lu-177m, Hf-172, Hf-182, Ta-179, Re-184m, Re-187, Re-189, Os-194, Ir-199m2, Pt-192, Pt-198, Hg-194, Pb-202, Pb-205, Bi-208, Ra-228, Np-236, Bk-248, Any radionuclide other than alpha- emitting radionuclides not listed above or mixtures of beta emitters of unknown composition	0.1 µCi	0.1 mCi	1.0 mCi	10 mCi	1.0 kCi
Na-22, Co-60, Ru-106, Ag-110m, Cs-134, Ce-144, Eu-152, Eu-154, Bi-210	1.0 µCi	1.0 mCi	10 mCi	100 mCi	10 kCi
Cl-36, Ca-45, Mn-54, Ni-63, Zn-65, Se-75, Rb-87, Zr-93, Nb-93m, Cd-109, In-115, Sb-125, Ba-133, Ba-135, Cs-137, Gd-153, Eu-155, Tm-170, Tm-171, W-181, Tl-204	10 µCi	10 mCi	100 mCi	1.0 Ci	100 kCi
C-14, Fe-55, Co-57, Ni-59, Kr-85, Tc-97, Tc-99, Pt-193, Ir-194, Th (natural), Th-232, U(natural), U-238	100 µCi	100 mCi	1.0 Ci	10 Ci	1.0MCi
H-3	1.0 mCi	1 Ci	10 Ci	100 Ci	10 MCi

Figure: 25 TAC §289.252(jj)(7)

Radioactive Material*	Release Fraction	Quantity (curies)
Ac-228(89)	0.001	4,000
Am-241 (95)	0.001	2
Am-242 (95)	0.001	2
Am-243 (95)	0.001	2
Sb-124(51)	0.01	4,000
Sb-126(51)	0.01	6,000
Ba-133(56)	0.01	10,000
Ba-140(56)	0.01	30,000
Bi-207 (83)	0.01	5,000
Bi-210 (83)	0.01	600
Cd-109(48)	0.01	1,000
Cd-113 48)	0.01	80
Ca-45 (20)	0.01	20,000
Cf-252 (98)	0.001	9(20mg)
C-14 (6)**	0.01	50,000
Ce-141(58)	0.01	10,000
Ce-144(58)	0.01	300
Cs-134(55)	0.01	2,000
Cs-137(55)	0.01	2,000
Cl-36 (17)	0.5	100
Cr-51 (24)	0.01	300,000
Co-60 (27)	0.001	5,000
Cu-64 (29)	0.01	200,000
Cm-42(96)	0.001	60
Cm-43(96)	0.001	3
Cm-44(96)	0.001	4
Cm-45(96)	0.001	2
Eu-152(63)	0.01	500
Eu-154(63)	0.01	400
Eu-155(63)	0.01	3,000
Ge-68 (32)	0.01	2,000
Gd-153(64)	0.01	5,000
Au-198(79)	0.01	30,000
Hf-172(72)	0.01	400
Hf-181(72)	0.01	7,000
Ho-166(67)	0.01	100
H-3 (1)	0.5	20,000
In-14m(49)	0.01	1,000
Ir-192 (77)	0.001	40,000
Fe-55 (26)	0.01	40,000
Fe-59 (26)	0.01	7,000
Kr-85 (36)	1.0	6,000,000
Pb-210(82)	0.01	8
Mn-56 (25)	0.01	60,000
Hg-203 (80)	0.01	10,000
Mo-99 (42)	0.01	30,000
Np-237 (93)	0.001	2
Ni-63 (28)	0.01	20,000
Nb-94 (41)	0.01	300
P-32 (15)	0.5	100
P-33 (15)	0.5	1,000
Po-210(84)	0.01	10
K-42 (19)	0.01	9,000
Pm-45(61)	0.01	4,000
Pm-47(61)	0.01	4,000
Ru-106(44)	0.01	200
Sm-51(62)	0.01	4,000
Sc-46 (21)	0.01	3,000
Se-75 (34)	0.01	10,000
Ag110m(47)	0.01	1,000
Na-22 (11)	0.01	9,000
Na-24 (11)	0.01	10,000
Sr-89 (38)	0.01	3,000
Sr-90 (38)	0.01	90
Sr-35 (16)	0.5	900
Tc-99 (43)	0.01	10,000
Tc-99m (43)	0.01	400,000
Te-27m(52)	0.01	5,000
Te-29m(52)	0.01	5,000
Tb-160 (65)	0.01	4,000
Tm-170 (69)	0.01	4,000
Sn-113 (50)	0.01	10,000
Sn-123 (50)	0.01	3,000
Sn-126 (50)	0.01	1,000
Xe-133 (54)	1.0	900,000
Y-91 (39)	0.01	2,000
Zn-65 (30)	0.01	5,000
Zr-93 (40)	0.01	400
Zr-95 (40)	0.01	5,000
Any other ß-γ emitter	0.01	10,000
Mixed fission products	0.01	1,000
Mixed corrosion products	0.01	10,000
Contaminated equipment, ß-γ	0.001	10,000
Irradiated material any form other than solid non-combustible	0.01	1,000
Irradiated material, solid non-combustible	0.001	10,000
Mixed radioactive waste, ß-γ	0.01	1,000
Packaged waste, ß-γ***	0.001	10,000
Any other α emitter	0.001	2
Contaminated equipment α	0.0001	20
Packaged waste***	0.0001	20

Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)
I-125 (53)	0.5	10	Ti-144 (22)	0.01	100			
I-131 (53)	0.5	10	V-48 (23)	0.01	7,000			

* For combinations of radionuclides, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radionuclide authorized to the quantity listed for that radionuclide in this paragraph exceeds one. ( ) indicates atomic number.

** Non CO forms only.

*** Waste packaged in Type B containers does not require an emergency plan.

Figure: 25 TAC §289.252(jj)(9)(D)

Radionuclide	Quantity of Concern[1] (TBq)	Quantity of Concern[2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above[3]	See footnote below[4]	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material. When transporting or storing sources on vehicles and/or trailers, the sources are automatically considered co-located.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, *i* of radionuclide, *n*, A(*i*,*n*), to the quantity of concern for radionuclide *n*, Q(*n*), listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc..... >1

Figure: 37 TAC § 5.52

MEMORANDUM OF UNDERSTANDING
COORDINATION OF DRUG LAW ENFORCEMENT EFFORTS

This Memorandum of Understanding is entered into by the Texas Department of Public Safety (DPS) and the Office of the Governor, Criminal Justice Division (CJD).

PURPOSE

Pursuant to §411.0096, Texas Government Code, the Texas Department of Public Safety and the Office of the Governor, Criminal Justice Division hereby adopt a joint memorandum of understanding on coordinating the drug law enforcement efforts of DPS and CJD.

DRUG POLICY

DPS will provide CJD with information relating to DPS planning efforts that address criminal threats in Texas.

At the Governor's request, DPS will provide representation on any advisory board advising the governor about law enforcement strategy.

LAW ENFORCEMENT STRATEGY

CJD has requested that DPS cooperate and coordinate its law enforcement efforts with federal, state and local law enforcement agencies when such coordinated strategies would prove to the greater benefit of the state's public safety with particular focus placed on the reduction of violent crime, criminal enterprise and organized crime.

CJD has also requested that DPS join them in the effort to promote information sharing, timely reporting and accurate data collection among the federal, state and local law enforcement entities with which they interact and coordinate.

CJD and DPS shall exchange information in a timely manner to enable CJD and DPS to comply with state and federal reporting requirements and to assess the effectiveness of each drug task force funded by the state.

AMENDMENT

This memorandum of understanding may be amended, as necessary, by subsequent written agreement adopted by rule.

APPROVED BY:

Texas Department of Public Safety

By: "SIGNATURE ON ORIGINAL"
Title: Director
Name: Tommy A. Davis Jr.

Office of the Governor,
Criminal Justice Division

By: "SIGNATURE ON ORIGINAL"
Name: Ken C. Nicolas
Title: Executive Director

Figure: 37 TAC § 5.56(b)

Task Force Application

Cover Sheet

Task Force Name:					
Project Director					
Name:				Title:	
Last		*First*	*M.I.*		
Address:					
Street Address					
			TX		
City			*State*	*ZIP Code*	
Phone:	( ) - x		E-mail Address:		
Fax Number:	( ) - x				
Task Force Commander					
Name:				Title:	
Last		*First*	*M.I.*		
Address:					
Street Address					
			TX		
City			*State*	*ZIP Code*	
Phone:	( ) - x		E-mail Address:		
Fax Number:	( ) - x				
LIST the cities and counties within the impact area:					

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PROJECT NARRATIVE FORM

Problem Statement: Provide a statement of the specific problem or problems, i.e. the strategic need this project is designed to address. This narrative should include information that defines the drug threat and explains the strategic need for the task force in the particular impact area.

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Supporting Data: Provide data that supports the problem. Use only data that is verifiable and relevant to your impact area. The data should be derived from baseline statistics. In addition, provide citations for the sources of your data.

Goal Statement: Based on your problem statement, provide a goal statement. It should address the intended impact your project seeks to attain. **DO NOT LIST ACTIVITIES.**

Project Summary: Briefly summarize the application, including the project's problem statement, supporting data, goal, activities, and objectives. Be sure that the summary is easy to understand by a person not familiar with your project and that you are confident and comfortable with the information if it were to be released under a public information request. A separate document should be attached to this application that fully describes the composition of the task force, to include the names of the participating agencies and the names, training records, and experience of the individual officers to be assigned to the task force.

Certifications:

A. At least twenty-five percent of personnel assigned to the task force shall be randomly tested at least quarterly for drugs by an independent scientific laboratory that meets federal Department of Health and Human Services guidelines for drug/metabolite testing. The Project Director shall provide the director with a copy of the task force's written drug testing policy if requested. The Project Director shall maintain documentation on file evidencing that the above drug testing was conducted. The Project Director shall notify the director of the identity of any employee with a positive drug test and shall take appropriate action as outlined in the applicant agency's policy on providing a drug-free workplace.

B. Applicant agrees that any aspect of the task force operation, including all records related to the operation of the task force, may be inspected to ensure compliance with state and federal law and requirements as well as policies and procedures established by DPS. Applicant agrees that the task force shall timely, accurately, and completely respond to any request for information, data, or reports by the director.

C. Personnel - The Project Director shall notify the director in writing, within five calendar days of the arrest, of the identity of any personnel that are arrested, the reason for the arrest, and any resulting action taken by the task force.

D. Litigation - The Project Director shall notify the director in writing of any lawsuit or pending litigation involving the task force or its personnel no later than five calendar days after receiving notice of any lawsuit or pending litigation.

The signature of the Project Director certifies that the applicant task force and any personnel assigned to the task force shall comply with all requirements contained in this application in addition to the following: (1) department policies and procedures in the most current version of the department's task force manual; (2) state and federal law and requirements; (3) all department rules; and (4) best police practices. In addition, if the Project Director or any task force personnel change, then the current Project Director shall notify the director within five calendar days after the change. A task force shall have a current Project Director at all times. If the Project Director changes, the current Project Director shall complete and sign the certification section of the application form and submit the certification to the director within five calendar days after the change.

Project Director _____ Date _____

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Extension of Time to Submit Proposals

The Texas Department of Agriculture (TDA) published a Request for Proposals (RFP) for Economic Research for the Texas Wine Industry in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8181). TDA has extended the time for submitting proposals from November 23, 2007, to December 28, 2007. All other terms and requirements of the RFP remain the same.

Please contact Mr. Bobby Champion, Jr. at (512) 463-3303 or by e-mail at: Robert.Champion@tda.state.tx.us if you have any questions.

TRD-200705948
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: November 29, 2007

♦ ♦ ♦

Brazos Valley Council of Governments

Notice of Release of Request for Proposal for Interpreter Services for Deaf and Hard of Hearing Individuals

On December 5, 2007 the Brazos Valley Council of Government (BVCOG) and Workforce Solutions, Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for Interpreter Services for Deaf and Hard of Hearing Individuals. The proposal requirements are contained in the Request for Proposal which may be obtained at www.bvjobs.org. The Board is seeking one contractor to provide interpreter services for deaf and hard of hearing individuals in the WSBVB service area in our Workforce Solutions Centers on an as needed basis. The RFP may be viewed and printed from the Internet on www.bvjobs.org.

Due Date

An original and six copies of a written proposal are due to the Board's offices no later than 4:00 p.m. December 27, 2007. No proposals will be accepted after this deadline. Proposals may be sent or hand carried to:

Trish Buck, Program Manager

Workforce Solutions Brazos Valley Board

3991 East 29th Street

Bryan, Texas 77802

Attention: Interpreter Services for Deaf and Hard of Hearing Individuals

Potential respondents may pose written questions concerning this RFP by email. Contact Trish Buck, Program Managers at pbuck@bvcog.org until 12:00 Noon, December 14, 2007. The contact person for this RFP is Trish Buck (979) 595-2801 x2010.

TRD-200706082
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: December 3, 2007

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Intent to Amend Consulting Contract

Pursuant to Chapter 2254, Subchapter B and Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of intent to amend and increase a major consulting services contract (previously bid under RFP 173a) for statistician consulting services to advise the Comptroller on statistical issues and provide other related services for the coming fiscal year in connection with the Comptroller's annual Property Value Study (Study).

Comptroller announces that the contract with Analytical Systems, Inc., 20 Colony Park Circle, P.O. Box 3041, Galveston, Texas 77551-3041, is to be amended and will be increased effective upon execution through August 31, 2008. The total amount of this contract is increased by $15,000.00 to not-to-exceed $45,000.00. The original term of the contract is December 7, 2005 through August 31, 2008. The reports submitted under this contract will be due on or before August 31, 2008.

The notice of request for proposals (RFP 173a) was first published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 5046).

TRD-200706114
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 5, 2007

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/10/07 - 12/16/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/10/07 - 12/16/07 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 12/01/07 - 12/31/07 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 12/01/07 - 12/31/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200706088
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 4, 2007

♦ ♦ ♦

Texas Education Agency

Public Notice: Extension of Public Comment Period on Proposed New 19 TAC Chapter 102, Educational Programs, Subchapter FF, Commissioner's Rules Concerning Educator Award Programs, §102.1073, District Awards for Teacher Excellence

The Texas Education Agency (TEA) published the following proposed rule action in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8079): Proposed New 19 TAC Chapter 102, Educational Programs, Subchapter FF, Commissioner's Rules Concerning Educator Award Programs, §102.1073, District Awards for Teacher Excellence.

The TEA is extending the public comment period on the proposed rule action through December 17, 2007. Comments on the proposal published in the November 9, 2007, issue of the *Texas Register* and viewable on the TEA website at http://www.tea.state.tx.us/rules/home/coeprop.html may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028.

Further Information: For clarifying information about this notice, contact Jerel Booker, Division of Education Initiatives, TEA, (512) 463-3452.

TRD-200706128
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: December 5, 2007

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 14, 2008.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 14, 2008.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Annona Manufacturing Company; DOCKET NUMBER: 2007-1827-PST-E; IDENTIFIER: RN101639441; LOCATION: Annona, Red River County, Texas; TYPE OF FACILITY: manufacturing company with fleet refueling; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.50(a)(1)(A), by failing to provide release detection; 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $5,075; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: City of Archer City; DOCKET NUMBER: 2007-1233-MSW-E; IDENTIFIER: RN102290913; LOCATION: Archer City, Archer County, Texas; TYPE OF FACILITY: Type 5 transfer station; RULE VIOLATED: 30 TAC §330.201(b), by failing to submit a permit modification application; and 30 TAC §330.125(b)(7), by failing to maintain proper recordkeeping; PENALTY: $1,100; ENFORCEMENT COORDINATOR: Cynthia McKaughan, (512) 239-0735; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: Roger Bufler dba B & S Construction; DOCKET NUMBER: 2007-1485-WQ-E; IDENTIFIER: RN105171318; LOCATION: Andrews, Andrews County, Texas; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $950; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(4) COMPANY: Blue Line Corporation; DOCKET NUMBER: 2007-1378-AIR-E; IDENTIFIER: RN103103792; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: inorganic chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent unauthorized emissions that caused a nuisance condition; and 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain authorization for hydrochloric acid emissions; PENALTY: $6,230; Supplemental Environmental Project (SEP) offset amount of $3,115 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Caddo Lake Water Supply Corporation; DOCKET NUMBER: 2007-0797-PWS-E; IDENTIFIER: RN101281616; LOCATION: Harrison County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY:

$760; ENFORCEMENT COORDINATOR: Thomas Barnett, (713) 767-3500; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2007-0940-AIR-E; IDENTIFIER: RN102229572; LOCATION: near Midkiff, Midland County, Texas; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §106.352 (formerly Standard Exemption 72) and THSC, §382.085(b), by failing to comply with emission limitations as specified in the Standard Exemption 72 registration; 30 TAC §122.136(b) and THSC, §382.085(b), by failing to identify Tank Numbers 45 and 46 as having 40 CFR Part 60, Subpart Kb applicability; 30 TAC §101.20(1), 40 CFR §60.112b(a)(3)(i), and THSC, §382.085(b), by failing to install controls required by 40 CFR Part 60, Subpart Kb on Tank Numbers 45 and 46 when the tanks were converted from pressure tank service to atmospheric tank service; 30 TAC §122.136(b) and THSC, §382.085(b), by failing to include compliance assurance monitoring applicability for Engine Number 35 and 36 on the Title V permit renewal application; 30 TAC §101.20(1), 40 CFR §60.482-4(b), and THSC, §382.085(b), by failing to conduct post activation follow up monitoring for pressure relief valves; 30 TAC §101.20(1) and §116.620(a)(12), 40 CFR §60.18(c)(3)(ii), and THSC, §382.085(b), by failing to have a program in place to verify that sufficient supplemental fuel gas is supplied to the waste gas flare; and 30 TAC §101.20(1), 40 CFR §60.18(c)(3)(i)(B), and THSC, §382.085(b), by failing to maintain proper documentation to demonstrate compliance with the flare stack velocity; PENALTY: $99,666; Supplemental Environmental Project (SEP) offset amount of $39,866 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(7) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2007-0760-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 914, Special Condition (SC) Number 7, Federal Operating Permit (FOP) Number O-02074, SC Number 15, and THSC, §382.085(b), by failing to sample cooling tower water according to the requirements of the TCEQ Sampling Procedures Manual Appendix P; 30 TAC §116.110(a) and THSC, §382.085(b), by failing to represent 176 flanges and 88 valves in the permit application for Air Permit Number 914; 30 TAC §§113.520, 115.354(2)(C), and 122.143(4), FOP Number O-02074, SC Number 1H, 40 CFR §63.1026(b)(1), and THSC, §382.085(b), by failing to monitor 88 valves and 15 pumps; 30 TAC §122.143(4), FOP Number O-02074, SC Number 3(A)(iv)(1), and THSC, §382.085(b), by failing to conduct quarterly opacity observations; 30 TAC §§101.20(2), 115.352(4), 116.115(c), and 122.143(4), CFR §61.242-6(a), Air Permit Number 914, SC Number 9(E), FOP Number O-01896, SC Number 1(A), FOP Number O-02074, SC Numbers 1(A) and 15, and THSC, §382.085(b), by failing to equip eight open ended lines with a cap, blind flange, plug, or a second valve; 30 TAC §101.20(2) and §122.143(4), 40 CFR §61.354(d), FOP Number O-02074, SC Number 1(A), and THSC, §382.085(b), by failing to monitor carbon canisters on five different occasions; 30 TAC §§111.111(a)(4), 116.115(c), and 122.143(4), Air Permit Number 914, SC Number 4(C), FOP Number O-02074, SC Number 1(A), and THSC, §382.085(b), by failing to prevent visible emissions at the flare; 30 TAC §101.20(2) and §122.143(4), 40 CFR §61.242-1(d), FOP Number O-01896, SC Number 1(A), and THSC, §382.085(b), by failing to identify two pieces of equipment during the certification period; 30 TAC §101.20(2) and §122.143(4), 40 CFR §61.345(a)(1)(ii), FOP Number O-01896, SC Number 1(A), and THSC, §382.085(b), by failing to maintain 24 drums containing waste material in a properly sealed position; 30 TAC §101.20(2) and §122.143(4), 40 CFR §61.355(b) and §61.356(b), FOP Number O-02074, SC Number 1(A), and THSC, §382.085(b), by failing to determine the annual benzene waste quantity at the point of waste generation and to keep records for those points; 30 TAC §122.143(4), FOP Number O-01896, SC Number 1(A), and THSC, §382.085(b), by failing to maintain the fluoride content feed rate below 19 pounds per hour; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report a reportable emission event; 30 TAC §§116.115(b)(2)(F), 116.115(c), and 122.143(4), FOP Number O-2001, SC Number 8, Air Permit Number 9176, SC Number 1, and THSC, § 382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; and 30 TAC §116.115(b)(2)(F) and §116.115(c), Air Permit Number 20204, SC Number 1, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; PENALTY: $77,860; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2007-1308-AIR-E; IDENTIFIER: RN100216035; LOCATION: Jefferson County, Texas; TYPE OF FACILITY: industrial organic chemicals plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to prevent unauthorized emissions; PENALTY: $4,950; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Elite Computer Consultants, L.P. dba Ed Lou Mobile Home Park; DOCKET NUMBER: 2007-1324-MWD-E; IDENTIFIER: RN102916848; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12600001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number 12600001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: $4,960; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Charles J. Engle; DOCKET NUMBER: 2007-1328-AIR-E; IDENTIFIER: RN100823954, RN103940854; LOCATION: El Paso and San Elizario Counties, Texas; TYPE OF FACILITY: fuel dispensers; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum seven pounds per square inch absolute (psia) Reid vapor pressure (RVP) requirements; and 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum seven psia RVP requirements for gasoline; PENALTY: $4,620; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(11) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2007-0771-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: synthetic chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(2), 113.100, and 116.115(c), Air Permit Number 7699, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $20,000; Supplemental Environmental Project (SEP) offset amount of $10,000 applied to City of Point Comfort Wastewater Treatment Plant Repair Assistance; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL

OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2007-0230-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: synthetic chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Air Permit Number 7699, SC Number 1, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; and 30 TAC §101.201(a)(1)(A) and (a)(1)(B) and THSC, §382.085(b), by failing to submit a timely and accurate initial notification of an emissions event; PENALTY: $6,422; Supplemental Environmental Project (SEP) offset amount of $3,211 applied to City of Point Comfort Wastewater Treatment Plant Repair Assistance; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: City of Frankston; DOCKET NUMBER: 2007-1076-MWD-E; IDENTIFIER: RN102834405; LOCATION: Frankston, Anderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010441001, Interim Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, and the Code, §26.121(a), by failing to comply with its permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010441001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: $10,455; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(14) COMPANY: Hector Guzman; DOCKET NUMBER: 2007-1179-MWD-E; IDENTIFIER: RN101511673; LOCATION: Liberty, Liberty County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.64(b), by failing to submit an application to transfer the TPDES Permit Number 14026001 from the previous owner to the current owner; and 30 TAC §305.65 and §305.125(1), TPDES Permit Number 14026001, Permit Conditions Number 4.c., and the Code, §26.121(a)(1), by failing to maintain authorization to discharge wastewater; PENALTY: $6,420; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2007-1411-AIR-E; IDENTIFIER: RN100219740; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-01384, General Terms and Conditions, and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $3,950; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2007-1325-PWS-E; IDENTIFIER: RN100238708; LOCATION: Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant with a public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: $632; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: City of Itasca; DOCKET NUMBER: 2007-1373-PWS-E; IDENTIFIER: RN101385771; LOCATION: Itasca, Hill County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain distribution system lines, water storage and pressure maintenance facilities, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: $218; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: City of Jayton; DOCKET NUMBER: 2007-1086-PWS-E; IDENTIFIER: RN101385128; LOCATION: Van Zandt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.118(a) and (b) and THSC, §341.0315(c), by failing to receive written approval from the commission prior to utilizing water that does not meet the secondary constituent levels for public drinking water; 30 TAC §290.46(f)(2) and (f)(3)(B)(vi), by failing to maintain records regarding the installation and testing of all backflow prevention assemblies in the water system and to make those records available; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement or an approved exception to the easement requirement; 30 TAC §290.43(c)(4), by failing to provide a water level indicator; 30 TAC §290.46(f)(4), by failing to submit a disinfectant level quarterly report; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that is readily accessible and immediately available in the event of an emergency; 30 TAC §290.110(c)(5)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system; 30 TAC §290.46(f)(3)(E)(iv), by failing to maintain records of all customer service inspection reports; and 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: $3,387; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(19) COMPANY: LGI HOMES, LTD. (formerly known as JTM Housing, Ltd.); DOCKET NUMBER: 2007-1635-MWD-E; IDENTIFIER: RN104443551; LOCATION: Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014564001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $850; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: City of Lone Oak; DOCKET NUMBER: 2007-0839-MWD-E; IDENTIFIER: RN101920668; LOCATION: Hunt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010760001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $13,020; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: McLennan County Water Control and Improvement District Number 2; DOCKET NUMBER: 2007-1504-PWS-E; IDENTIFIER: RN101194066; LOCATION: Elm Mott, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice; PENALTY: $460; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Merisol USA LLC; DOCKET NUMBER: 2007-1135-AIR-E; IDENTIFIER: RN100214576; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: cresylic acid

production; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(D) and THSC, §382.085(b), by failing to properly report the emissions event; PENALTY: $6,681; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Joe E. Panagopoulos dba Metro Materials; DOCKET NUMBER: 2007-1182-MSW-E; IDENTIFIER: RN105225106; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: unauthorized brush and mulch recycling; RULE VIOLATED: 30 TAC §328.4(a) and §328.5(a), by operating an unauthorized recycling facility; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: Murpaks, Inc.; DOCKET NUMBER: 2007-1336-MLM-E; IDENTIFIER: RN102177888; LOCATION: Junction, Kimble County, Texas; TYPE OF FACILITY: cedar wood oil extraction; RULE VIOLATED: 30 TAC §§37.921, 328.5(d), and 335.24(k), by failing to obtain and maintain financial assurance for the closure of a facility that stores combustible, recyclable materials outdoors; PENALTY: $3,690; ENFORCEMENT COORDINATOR: Cynthia McKaughan, (512) 239-0735; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(25) COMPANY: City of Nome; DOCKET NUMBER: 2006-1393-PWS-E; IDENTIFIER: RN101387843; LOCATION: Nome, Jefferson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by exceeding the MCL for haloacetic acid; and 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: $3,135; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(26) COMPANY: Samuel Dean Paddock; DOCKET NUMBER: 2007-1829-WOC-E; IDENTIFIER: RN103456455; LOCATION: Denison, Grayson County, Texas; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Pottsboro Independent School District; DOCKET NUMBER: 2007-1209-AGR-E; IDENTIFIER: RN104984000; LOCATION: Pottsboro, Grayson County, Texas; TYPE OF FACILITY: agricultural barn; RULE VIOLATED: 30 TAC §321.47(d)(3) and (5), by failing to properly install and maintain a pond or retention control structure (RCS); and 30 TAC §321.47(e)(6), by failing to ensure that a permanent pond marker is maintained in the RCS; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Quebecor World Dallas II Inc.; DOCKET NUMBER: 2007-1568-AIR-E; IDENTIFIER: RN100212885; LOCATION: Farmers Branch, Dallas County, Texas; TYPE OF FACILITY: commercial printing plant; RULE VIOLATED: 30 TAC §121.121 and §122.133(2) and THSC, §382.054 and §382.085(b), by failing to renew site operating permit number O-01247; and 30 TAC §121.146(2) and THSC, §382.085(b), by failing to timely submit the annual compliance certification; PENALTY: $7,700; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Shintech Incorporated; DOCKET NUMBER: 2007-1527-AIR-E; IDENTIFIER: RN100637909; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: resins manufacturing plant; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit the semi-annual deviation report; PENALTY: $2,475; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Southern Union Gas Services, Ltd.; DOCKET NUMBER: 2007-1430-AIR-E; IDENTIFIER: RN103952925; LOCATION: Winkler County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification; PENALTY: $1,875; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(31) COMPANY: Southwest Texas District of the Pentecostal Church of God, Inc.; DOCKET NUMBER: 2007-1391-PWS-E; IDENTIFIER: RN101232031; LOCATION: Comal County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect water samples for monthly bacteriological analysis and by failing to provide public notification of the failure to conduct bacteriological sampling; PENALTY: $1,887; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(32) COMPANY: Stagecoach Inn Properties Inc. dba Stagecoach Inn; DOCKET NUMBER: 2007-1269-MLM-E; IDENTIFIER: RN105156533; LOCATION: Salado, Bell County, Texas; TYPE OF FACILITY: motel and restaurant; RULE VIOLATED: 30 TAC §111.201 and §330.15(c) and THSC, §382.085(b), by failing to prevent unauthorized outdoor burning; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(33) COMPANY: Stericycle, Inc.; DOCKET NUMBER: 2005-1987-MSW-E; IDENTIFIER: RN101666550; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: medical waste processing operation; RULE VIOLATED: 30 TAC §330.111(a) and §330.150(1) and Permit Number 2222, Sections 4.3.1. and 8.2.2., by failing to reject and properly process unlabeled medical waste; and 30 TAC §330.5(a)(3) and Permit Number 2222, Section 9.2.4., by failing to prevent unauthorized treatment of medical waste; PENALTY: $8,400; Supplemental Environmental Project (SEP) offset amount of $3,360 applied to Household Hazardous Waste Collection Event; ENFORCEMENT COORDINATOR: Cynthia McKaughan, (512) 239-0735; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2007-1365-AIR-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 5572B, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial emissions event report; 30 TAC §101.201(f) and THSC, §382.085(b), by failing to submit additional information regarding Incident Number 91432; and 30 TAC §116.115(c), NSR Permit Number 5572B, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $20,400; ENFORCEMENT

COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: City of Tahoka; DOCKET NUMBER: 2005-1897-PWS-E; IDENTIFIER: RN101234847; LOCATION: Tahoka, Lynn County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.44(h)(4)(C), by failing to provide backflow prevention records for all high hazard facilities; 30 TAC §290.41(c)(3)(K), by failing to properly screen the casing vents; 30 TAC §290.43(c)(2), by failing to provide a proper seal or gasket on the inside of the ground storage hatches; 30 TAC §290.46(u), by failing to plug all abandoned wells owned by the system; and 30 TAC §290.43(e), by failing to provide an intruder-resistant fence for the elevated storage tank; PENALTY: $7,150; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(36) COMPANY: Tarken Builders, Ltd.; DOCKET NUMBER: 2007-1585-WQ-E; IDENTIFIER: RN105330864; LOCATION: Rockport, Aransas County, Texas; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge storm water associated with construction activities; and the Code, §26.121(a), by failing to prevent the unauthorized discharge of storm water and sediment into or adjacent to water in the state; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(37) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2007-1405-MWD-E; IDENTIFIER: RN102076379; LOCATION: Ellis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011958001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $4,650; Supplemental Environmental Project (SEP) offset amount of $3,720 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: Texas Egg Products, LLC; DOCKET NUMBER: 2007-1388-WQ-E; IDENTIFIER: RN104986161; LOCATION: Waelder, Gonzales County, Texas; TYPE OF FACILITY: egg cracking; RULE VIOLATED: the Code, §26.121(a), by failing to prevent an unauthorized discharge from the facility's on-site lift station; PENALTY: $950; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(39) COMPANY: The Hertz Corporation dba Hertz Car Rental 2183 11; DOCKET NUMBER: 2007-1330-AIR-E; IDENTIFIER: RN100821040; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: vehicle rental business with gasoline dispensing; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum RVP requirement of seven psia; PENALTY: $1,100; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(40) COMPANY: Thelin Recycling Company, L.P.; DOCKET NUMBER: 2007-1092-AIR-E; IDENTIFIER: RN100762954; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: recycling and composting site; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance level odors from impacting off property receptors; PENALTY: $9,100; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(41) COMPANY: TRI Century Management Solutions, Inc. dba Lance Friday Homes; DOCKET NUMBER: 2007-1169-WQ-E; IDENTIFIER: RN104980032; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: commercial construction sites; RULE VIOLATED: 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR15BU46, Part III.F.2.IV, by failing to remove accumulations of sediment that had escaped the construction sites; PENALTY: $410; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(42) COMPANY: Westwind Enterprises, Ltd. dba Cedar Grove Manufactured Home Community; DOCKET NUMBER: 2007-1252-WQ-E; IDENTIFIER: RN104488531; LOCATION: Copperas Cove, Coryell County, Texas; TYPE OF FACILITY: wastewater collection system manhole; RULE VIOLATED: the Code, §26.039(b), by failing to report an unauthorized discharge of untreated wastewater; and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of untreated wastewater; PENALTY: $3,300; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(43) COMPANY: W. Silver, Inc.; DOCKET NUMBER: 2006-1765-IHW-E; IDENTIFIER: RN100930965; LOCATION: Vinton, El Paso County, Texas; TYPE OF FACILITY: manufacturing; RULE VIOLATED: 30 TAC §335.10(a)(1), by failing to properly complete manifests for 46,500 pounds of Class 1 Industrial Waste; and 30 TAC §335.6(c), by failing to update the Notice of Registration; PENALTY: $3,696; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

TRD-200706087
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 4, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 14, 2008.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considera-

tions that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 14, 2008.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Corby Hicks; DOCKET NUMBER: 2007-0518-LII-E; TCEQ ID NUMBER: RN103393344; LOCATION: 9709 Brown Lane, Suite O, Austin, Travis County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), Texas Water Code (TWC), §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system; 30 TAC §344.70, by failing to comply with local regulations that contain reasonable inspection requirements, ordinances, or regulations designed to protect the public water supply; 30 TAC §§344.94(a) and (b), 344.95(c), and 344.96, by failing to specify the name, license number, business address, and telephone number of the licensed irrigator, the date the agreement was signed by each party, the total agreed price, a copy of the design of the system to be installed including a statement of the area to be covered, a written statement of guarantees for materials and labor furnished, and the statement Irrigation in Texas is regulated by the Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 on all written contracts and bills to install irrigation systems; 30 TAC §344.95(a) and (b), by failing to design an irrigation system, or portion thereof, so as to require the use of any component part in a way which does not exceed the manufacturer's performance limitations for the part; and 30 TAC §344.93(c), by failing to refrain from false, misleading, or deceptive practices relating to the bidding or advertising of services and fees; PENALTY: $2,250; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Terry Brown; DOCKET NUMBER: 2007-0339-LII-E; TCEQ ID NUMBER: RN105170823; LOCATION: 7321 Ridge Road West, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system; PENALTY: $250; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200706090

Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 4, 2007

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 14, 2008.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 14, 2008.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: BASF Corporation; DOCKET NUMBER: 2006-0735-AIR-E; TCEQ ID NUMBER: RN100218049; LOCATION: 602 Copper Road, Freeport, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.20(1) and §116.115(c), 40 Code of Federal Regulations (CFR) §60.662, Air Permit Number 1733A, Special Condition 5, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the catalytic oxidizer temperatures at required levels; 30 TAC §101.20(1), 40 CFR §60.113b(a)(5) and §60.115b(a)(3), and THSC, §382.085(b), by failing to notify the TCEQ prior to filling or refilling Tank D-60 C on February 1, 2004; 30 TAC §116.110(a) and THSC, §382.085(b), by failing to prevent the unauthorized emissions of 170 pounds (lbs), 156.5 lbs, 23.2 lbs, and 1,035 lbs of volatile organic compounds from the demethanator (EPN 11-1-101) on December 12, 2002, January 13, 2003, August 11, 2003, and October 21, 2003, respectively; 30 TAC §116.115(c), Air Permit Number 8074A, Special Condition 1, and THSC, §382.085(b), by failing to limit emissions from Flare 5-2-FL200 (EPN 5-2-02) in the OXO Alcohols Unit to those established by the permit; 30 TAC §116.115(c), Air Permit Number 8074A, Special Condition 1, and THSC, §382.085(b), by failing to comply with permitted emission limits by allowing unauthorized emissions of 130 lbs of propylene to be released; 30 TAC §116.115(c), Air Permit Number 8074A,

Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c), Air Permit Number 8074A, Special Condition 1, and THSC, §382.085(b), by failing to comply with permitted emissions; and 30 TAC §116.115(c), Air Permit Number 8074A, Special Condition 1, and THSC, §382.085(b), by failing to comply with permitted emissions limit; PENALTY: $87,120; Supplement Environmental Project offset amount of $43,560 applied to Houston-Galveston Area Emission Reduction Credit Organization Clean Cities/Clean Vehicles Program; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Kent J. Miguez dba Miguez Trailer Park; DOCKET NUMBER: 2005-1395-PWS-E; TCEQ ID NUMBER: RN104574470; LOCATION: 18121 Austin Drive, Winnie, Jefferson County, Texas; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.39(h)(1) and THSC, §341.035, by failing to receive written approval of plans and specifications before beginning construction on a new PWS; and 30 TAC §290.42(e)(2) and THSC, §341.031, by failing to install disinfection equipment so that continuous and effective disinfection can be secured under all conditions; PENALTY: $1,050; STAFF ATTORNEY: Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Qusra Corporation dba Lone Star Superette; DOCKET NUMBER: 2006-1769-PST-E; TCEQ ID NUMBER: RN102827649; LOCATION: 24652 Highway 124, Hamshire, Jefferson County, Texas; TYPE OF FACILITY: retail gas service station; RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and by failing to verify Vapor Space Manifolding and Dynamic Pressure Performance at least once every 36 months; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.50(a)(1)(A) and (d)(1)(B)(ii) and Texas Water Code, §26.3745(a), by failing to monitor the UST system for releases at least once per month and by failing to reconcile inventory control records on a monthly basis with sufficient accuracy to detect a release which equals or exceeds the sum of 1% of the flow through plus 130 gallons; and 30 TAC §115.242(3) and (9) and THSC, §382.085(b), by failing to operate the Stage II system in accordance with the California Air Resources Board executive order and by failing to post operating instructions conspicuously on the front of each dispenser; PENALTY: $11,250; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200706089
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 4, 2007

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual Report for Candidates and Officeholders Due July 16, 2007

Harold V. Dutton, Jr., 4001 Jewett Street, Houston, Texas 77026

David L. Richards, 601 University Drive, Suite 114, Fort Worth, Texas

Ricardo P. Rodriguez, Jr., 3121 S. Closner Boulevard, Suite A, Edinburg, Texas 78539-4086

Deadline: Semiannual Report for Committees Due July 16, 2007

Carlos J. Contreras, KBSA PAC, 4800 Fredericksburg Road, San Antonio, Texas 78229-3628

Wanda Williams, Glass, Molders, Pottery, Plastics & Allied Workers Local #216, 1507 Gleason Avenue, Cleburne, Texas 76033-6737

Deadline: Lobby Correction to Update Registration filed May 23, 2007

Anthony Haley, 919 Congress Avenue, Suite 1130, Austin, Texas 78701-2157

Deadline: Lobby Activities Report due July 10, 2007

Kelly S. Rodgers, 603 W. 13th Street, Suite 1A-416, Austin, Texas 78701-1744

Deadline: Lobby Activities Report due August 10, 2007

Lisa Barsumian, 2600 Lake Austin Boulevard, Apt. 12101, Austin, Texas 78703

John Kroll, 919 Congress Avenue, Suite 1130, Austin, Texas 78701-2157

Deadline: Lobby Activities Report due September 10, 2007

Mike French, 816 Congress Avenue, Suite 940, Austin, Texas 78701

Donald C. Lee, 500 West 13th Street, Austin, Texas 78701

Jim Warren, 710 W. 30th Street, Austin, Texas 78705-2206

Deadline: Lobby Activities Report due October 10, 2007

Jim Warren, 710 W. 30th Street, Austin, Texas 78705-2206

Deadline: Personal Financial Statement due June 29, 2007

Arthur J. Eisenberg, UNT Health Center, 3500 Camp Bowie Boulevard, Fort Worth, Texas 76107

Jack R. Hamilton, 10 Rains Way, Houston, Texas 77007-7009

Deadline: Personal Financial Statement due September 19, 2007

Margaret Martin, 384 Hannah Lane, Boerne, Texas 78006

TRD-200706107
David Reisman
Executive Director
Texas Ethics Commission
Filed: December 4, 2007

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Texas Facilities Commission

Request for Proposals #303-8-10736

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) 303-8-10736. TFC seeks a 5 or

10-year lease of approximately 14,892 square feet of office space in Brownsville, Cameron County, Texas.

The deadline for questions is December 21, 2007; and the deadline for proposals is January 3, 2008 at 3:00 p.m. The award date is February 20, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=74145*.

TRD-200706000
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 30, 2007

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General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey as identified by Galveston County §33.136 sketch no. 48, submitted by Sidney Bouse, Licensed State Land Surveyor, conducted November 8 - 14, 2006, locating the following shoreline boundary:

Being the mean high water line that separates parts of Lots 529 and 530 of Section 1 of the Trimble & Lindsey Survey of Galveston Island from State Submerged Area Tract 105-A, Galveston Bay; approximately 2200 feet northeast of Teichman Point.

The line depicted on the survey fixes the shoreline for purposes of locating a shoreline boundary, subject to movement landward of that line. This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email bill.ohara@glo.state.tx.us, or fax (512) 463-5223.

TRD-200706091
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: December 4, 2007

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Texas Health and Human Services Commission

Notice of Adopted Medicaid Provider Payment Rates for the Truman W. Smith Children's Care Center

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted new per diem payment rates for the Truman W. Smith Children's Care Center, a nursing facility that is a member of the pediatric care facility special reimbursement class of the Nursing Facility Program operated by the Texas Department of Aging and Disability Services (DADS). These payment rates are based on total allowable per diem costs from the most recently available, reliable cost report for the provider inflated to the rate period(s) and multiplied by 1.03. The proposed rates and public hearing notice were published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6871).

The adopted payment rates are as follows:

Effective January 1, 2007 through August 31, 2007: $182.75. Effective September 1, 2007: $189.04

Methodology and Justification. The adopted rates were determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology. The rate change for the period January 1, 2007 through August 31, 2007 is being made to recognize increased operating costs for this facility during that time period. The rate change effective September 1, 2007 is being made in accordance with the 2008-09 General Appropriations Act (Article IX, Section 19.82, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated $27.0 million in general revenue funds for State Fiscal Year 2008 for provider rate increases for the DADS Nursing Facility Program.

TRD-200706001
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: November 30, 2007

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 11, 2008, at 9:00 a.m. to receive public comment on proposed rates for the following community care programs and services operated by the Department of Aging and Disability Services (DADS): Consumer Directed Services (CDS) in the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) waiver programs; Support Consultation Services for DADS consumers participating in CDS; the monthly fee paid to Consumer Directed Services Agencies for consumers electing CDS in the HCS and TxHmL programs; and the monthly Case Management, Administration and Operations Fee remaining with the traditional provider for consumers who elect CDS in the HCS program.

The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to set rates for the services listed above. The proposed rates will be effective February 1, 2008, and were determined in accordance with the rate setting methodologies listed below under Methodology and Justification.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at Texas Administrative Code (TAC) Title 1 Chapter 355, Subchapter A, §355.101,

Introduction and §355.114, Consumer Directed Services Payment Option, and 1 TAC Chapter 355, Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services (HCS) and §355.791, Reporting Costs and Reimbursement Methodology for the Texas Home Living (TxHmL) Program. HCS CDS, TxHmL CDS and Support Consultation Services are new services that will be available to certain DADS consumers effective February 1, 2008, and require rates before they can be implemented.

Briefing Package. A briefing package describing the proposed payment rates will be available on December 21, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200706086
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 3, 2007

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on December 31, 2007, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for three digital mammography procedure codes (4/I/T-G0202, 4/I/T-G0204, and 4/I/T-G0206). The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e)-(f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates will be effective January 1, 2008. The proposed rates are as follows:

TOS*	Procedure Code		Current Medicaid RVUs	Current Medicaid Fee	Proposed Medicaid RVUs	Proposed Medicaid Fee
4	G0202	Screening mammography, producing direct digital image, bilateral, all views	1.52	$41.46	3.61	$98.47
I	G0202		0.40	$10.91	0.97	$26.46
T	G0202		1.12	$30.55	2.64	$72.01
4	G0204	Diagnostic mammography, producing direct digital image, bilateral, all views	2.04	$55.64	4.38	$119.47
I	G0204		0.65	$17.73	1.21	$33.00
T	G0204		1.39	$37.91	3.17	$86.47
4	G0206	Diagnostic mammography, producing direct digital image, unilateral, all views		$57.62	3.46	$94.37
I	G0206			$21.32	0.97	$25.67
T	G0206			$36.30	2.64	$72.01

*Type of Service (TOS) Code Key: 4 = Radiology Services; I = Professional Component; T = Technical Component

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §55.8081 and 1 TAC §355.8085, which address the reimbursement methodologies for radiology services and physicians and certain other practitioners.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after December 17, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200706130
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 5, 2007

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on December 31, 2007, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for new benefits associated with neurostimulators. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by call-

ing (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates will be effective January 1, 2008. The proposed rates are as follows:

TOS*	Procedure Code	Current ASC Payment Group	Proposed ASC Payment Group
F	61850	Not a benefit	6
F	61860	Not a benefit	8
F	61863	Not a benefit	8
F	61864	Not a benefit	8
F	61867	Not a benefit	9
F	61868	Not a benefit	9
F	61870	Not a benefit	8
F	61875	Not a benefit	8
F	61886	Not a benefit	3
F	63655	Not a benefit	5
F	64550	Not a benefit	1
F	64555	Not a benefit	1
F	64580	Not a benefit	1
F	64590	Not a benefit	1
F	64595	Not a benefit	1

*Type of Service (TOS): F - Ambulatory Surgical Centers (ASCs)

*TOS	Procedure Code		Current Medicaid Fee	Proposed Medicaid Fee
9	A4290	Sacral nerve stimulation test lead, each	Not a benefit	$410.00
J	E0720	Transcutaneous electrical nerve stimulation (TENS) devise, two lead, localized stimulation	Not a benefit	$349.75
L	E0720		Not a benefit	$34.98
J	E0730	Transcutaneous electrical nerve stimulation (TENS) device, four or more leads, for multiple nerve stimulation	Not a benefit	$357.76
L	E0730		Not a benefit	$35.78
J	E0731	Form-fitting conductive garment for delivery of TENS or NMES (with conductive fibers separated from the patient's skin by layers of fabric)	Not a benefit	$303.19
L	E0731		Not a benefit	$30.32
9/J	E0740	Incontinence treatment system, pelvic floor stimulator, monitor, sensor and/or trainer	Not a benefit	$522.87
J	E0745	Neuromuscular stimulator, electronic shock unit	Not a benefit	$895.10
J	E0762	Transcutaneous electrical joint stimulation device system, includes all accessories	Not a benefit	$934.63
L	E0762		Not a benefit	$93.47

J	E0764	Functional neuromuscular stimulator, transcutaneous stimulation of muscles of ambulation with computer control, used for walking by spinal cord injured, entire system, after completion of training	Not a benefit	$10,755.87
L	E0764		Not a benefit	$1,077.58
9	L8680	Implantable neurostimulator electrode, each	Not a benefit	$388.51
9/J	L8681	Patient programmer (external) for use with implantable programmable neurostimulator pulse generator	Not a benefit	$902.36
9/J	L8682	Implantable neurostimulator radiofrequency receiver	Not a benefit	$5,042.33
9/J	L8683	Radiofrequency transmitter (external) for use with implantable neurostimulator radiofrequency receiver	Not a benefit	$4,438.39
9/J	L8684	Radiofrequency transmitter (external) for use with implantable sacral root neurostimulator receiver for bowel and bladder management, replacement	Not a benefit	$653.01

9/J	L8685	Implantable neurostimulator pulse generator, single array, rechargeable, includes extension	Not a benefit	$11,060.24
9/J	L8686	Implantable neurostimulator pulse generator, single array, non-rechargeable, includes extension	Not a benefit	$7,057.31
9/J	L8687	Implantable neurostimulator pulse generator, dual array, rechargeable, includes extension	Not a benefit	$14,393.81
9/J	L8688	Implantable neurostimulator pulse generator, dual array, non-rechargeable, includes extension	Not a benefit	$9,184.39
9/J	L8689	External recharging system for battery (internal) for use with implantable neurostimulator	Not a benefit	$1,458.95

*Type of Service (TOS): 9 - Other Durable Medical Equipment/Supplies (DME/S); J - Purchase - DME/S; L - Lease - DME/S

*TOS	Procedure Code	Current Medicaid Fee	Proposed Medicaid RVUs	Proposed Medicaid Fee	Client Age
8	61850	Not a benefit	5.04	$137.47	0-999
8	61860	Not a benefit	3.53	$96.28	0-999
8	61863	Not a benefit	5.04	$137.47	0-999
8	61864	Not a benefit	1.27	$34.64	0-999
8	61867	Not a benefit	8.72	$237.85	0-20
8	61867	Not a benefit		$249.83	21-999
8	61868	Not a benefit	2.74	$74.74	0-20
8	61868	Not a benefit		$78.50	21-999
8	61870	Not a benefit	1.82	$49.64	0-999
8	61875	Not a benefit	2.90	$79.10	0-999
8	61886	Not a benefit	2.47	$67.37	0-20
8	61886	Not a benefit	3.28	$93.94	21-999
8	63660	Not a benefit	2.52	$68.74	0-20
8	63660	Not a benefit		$72.31	21-999
8	63685	Not a benefit	2.55	$69.55	0-999
8	63688	Not a benefit	2.16	$58.92	0-20
8	63688	Not a benefit		$61.82	21-999
8	64573	Not a benefit	1.37	$37.37	0-20
8	64573	Not a benefit	2.44	$69.88	21-999
2	64580	Not a benefit	4.57	$130.88	0-999
8	64580	Not a benefit	0.73	$20.91	0-999
2	64590	Not a benefit	5.07	$145.20	0-999
8	64590	Not a benefit	0.81	$23.20	0-999
2	64595	Not a benefit	4.12	$118.00	0-999
8	64595	Not a benefit	0.66	$18.90	0-999

*Type of Service (TOS): 2 - Surgery; 8 - Assistant Surgery

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for assistant surgery services performed by physicians and certain other practitioners; 1 TAC §355.8021(b) - (c), which addresses the reimbursement methodology for durable medical equipment (DME) and expendable supplies; and 1 TAC §355.8121, which addresses the reimbursement methodology for ambulatory surgical centers (ASCs) and hospital-based ASCs.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after December 17, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

**Required Notice: The five-character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2007 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most recent Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.*

TRD-200706140
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 5, 2007

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Request for Public Comment

The Texas Health and Human Services Commission (HHSC) is seeking comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2008. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2007. This methodology and the resulting estimated caseload reduction credit will be submitted to the U.S. Department of Health and Human Services, Administration for Children and Families, for approval.

Under Section 407(b)(3) of the Social Security Act and Title 45 of the Code of Federal Regulations, Part 261, Subpart D, any State wishing to receive a TANF caseload reduction credit must complete and submit a report. The caseload reduction credit gives a State credit for reducing its TANF caseload between a base year and a comparison year. The State must develop a methodology for determining the TANF caseload reduction credit, which will be used to calculate the estimate. The State must provide the public with an opportunity to comment on the estimate and methodology. As the State agency that administers the TANF program, HHSC has developed the estimate and methodology and is providing the public with an opportunity for comment.

The methodology and the estimated caseload reduction credit will be posted on the HHSC website at http://www.hhsc.state.tx.us/research by December 14, 2007. Written or electronic copies of the methodology and estimate also can be obtained by contacting Ross McDonald, HHSC Texas Works Reporting Team Lead, by telephone at (512) 424-6843.

The public comment period begins December 14, 2007, and ends December 28, 2007. Comments must be submitted in writing to Texas Health and Human Services Commission, Strategic Decision Support, Attention: Ross McDonald, MC 1950, P.O. Box 13247, Austin, Texas 78711-3247. Comments also may be submitted electronically to Ross McDonald at ross.mcdonald@hhsc.state.tx.us.

TRD-200706134
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 5, 2007

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Austin	Jane C. Nelson MD PA	L06126	Austin	00	11/27/07
Carrollton	Frisco Heart & Vascular Institute	L06118	Carrollton	00	11/14/07
McKinney	Silk Imaging and Healthcare LP DBA Silk Imaging and Healthcare	L06129	McKinney	00	11/26/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	ARMC LP DBA Abilene Regional Medical Center	L02434	Abilene	79	11/15/07
Allen	Presbyterian Hospital of Allen	L05765	Allen	09	11/14/07
Allen	Presbyterian Hospital of Allen	L05765	Allen	10	11/29/07
Austin	Ambion Inc	L04307	Austin	20	11/15/07
Austin	ARA Imaging	L05862	Austin	24	11/26/07
Austin	Austin Radiological Association	L00545	Austin	134	11/26/07
Austin	Austin Radiological Association	L00545	Austin	135	11/29/07
Bay City	OXEA Corporation	L06073	Bay City	02	11/16/07
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary LP DBA North Hills Outpatient Imaging Center	L03455	Bedford	44	11/27/07
Brownsville	Jaime L Silva MD PA DBA Jaime L Silva MD	L05245	Brownsville	06	11/21/07
Corpus Christi	Triad Isotopes Inc DBA Clinical Nuclear Services	L05368	Corpus Christi	12	11/26/07
Cuero	Cuero Community Hospital	L02448	Cuero	24	11/20/07
Dallas	Cardinal Health	L05610	Dallas	10	11/16/07
Dallas	COR Specialty Associates of North Texas PA DBA The Dallas Heart Group	L04694	Dallas	29	11/16/07
Dallas	Metrocrest Hospital Authority DBA RHD Memorial Medical Center	L02314	Dallas	57	11/14/07
Decatur	Wise Regional Health System	L02382	Decatur	32	11/20/07
Denison	UHS of Texoma Inc DBA Texoma Medical Center	L01624	Denison	60	11/21/70
Denton	Denton Surgicare Partners LTD DBA Denton Surgicare	L05819	Denton	02	11/15/07
El Paso	Biotech Pharmacy Incorporated	L05335	El Paso	14	11/26/07
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	78	11/16/07
Fort Worth	Physician Reliance LP DBA Texas Oncology at Klabzuba	L05545	Fort Worth	25	11/19/07
Fort Worth	Physician Reliance LP DBA Texas Oncology at Klabzuba	L05545	Fort Worth	26	11/26/07
Groves	Renaissance Hospitals Inc DBA Renaissance Hospital	L02091	Groves	31	11/21/07
Harlingen	Texas Oncology PA DBA South Texas Cancer Center Harlingen	L00154	Harlingen	34	11/19/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00349	Houston	130	11/30/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	96	11/26/07
Houston	Nuclear Imaging Services	L05775	Houston	37	11/14/07

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	River Oaks Medical Center LP DBA Twelve Oaks Medical Center	L02432	Houston	49	11/19/07
Irving	Baylor Medical Center at Irving	L02444	Irving	70	11/14/07
Irving	Las Colinas Oncology MSO LP DBA Las Colinas Cancer Center	L06078	Irving	01	11/15/07
Katy	Hector Ubaldo MD PA DBA Physicians of Katy	L05876	Katy	05	11/15/07
La Porte	Invista Sarl	L05719	La Porte	04	11/28/07
Lubbock	Methodist Diagnostic Imaging DBA Covenant Diagnostic Imaging	L03948	Lubbock	40	11/16/07
Midland	Eddy Merket Inc	L04275	Midland	08	11/20/07
Mt Pleasant	Luminant Mining Company LLC	L06087	Mt Pleasant	01	11/15/07
Nacogdoches	The Heart Doctor Imaging Center	L05894	Nacogdoches	03	11/26/07
Nassau Bay	Christus Health DBA Christus St John Hospital	L03291	Nassau Bay	29	11/15/07
North Richland Hills	Columbia North Hills Hospital Subsidiary LP DBA North Richland Hills	L02271	North Richland Hills	54	11/14/07
Pasadena	Celanese LTD	L01130	Pasadena	70	11/29/07
Paris	Advanced Heart Care PA	L05290	Paris	23	11/26/07
Port Arthur	Gulf Coast Cardiology Group PA	L05393	Port Arthur	14	11/20/07
San Antonio	Cardiovascular Associates of San Antonio PA	L04996	San Antonio	14	11/26/07
San Antonio	Central Cardiovascular Institute of San Antonio	L04892	San Antonio	18	11/15/07
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	96	11/20/07
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	26	11/20/07
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	160	11/15/07
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	161	11/27/07
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	60	11/29/07
San Antonio	Southwest Research Institute	L04958	San Antonio	13	11/16/07
San Antonio	US Diagnostic Inc DBA San Antonio Diagnostic Imaging Inc	L04968	San Antonio	23	11/14/07
San Antonio	VHS San Antonio Partners LLC DBA Baptist Health System	L00455	San Antonio	168	11/19/07
San Antonio	VHS San Antonio Partners LLC DBA Baptist Health System	L00455	San Antonio	169	11/20/07
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	63	11/20/07
Sugar Land	Thermo Measuretech	L03524	Sugar Land	75	11/20/07
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	16	11/16/07
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	73	11/27/07
Throughout Tx	RSI Inspection LLC	L05624	Abilene	10	12/01/07
Throughout Tx	Amarillo Testing & Engineering Inc	L02658	Amarillo	17	11/19/07
Throughout Tx	Global X-Ray & Testing Corp	L03663	Aransas Pass	104	11/21/07
Throughout Tx	Medical Edge Healthcare Group PA DBA Heart First	L05555	Carrollton	17	11/19/07
Throughout Tx	Fugro South Inc	L03461	Dallas	25	11/30/07
Throughout Tx	Giles Engineering Associates Inc	L04919	Dallas	11	11/21/07
Throughout Tx	Professional Service Industries Inc	L04940	Dallas	10	11/30/07
Throughout Tx	GK Techstar LLC DBA Techstar	L05562	Deer Park	09	11/16/07
Throughout Tx	Irisndt Inc	L04769	Deer Park	43	11/27/07
Throughout Tx	Amec Earth & Environmental Inc	L03622	El Paso	21	11/20/07
Throughout Tx	Mestena Uranium LLC	L05939	Encino	05	11/19/07
Throughout Tx	H&H X-Ray Services Inc	L02516	Flint	66	11/19/07
Throughout Tx	Recon Petrotechnologies Inc	L06026	Fort Worth	02	11/19/07

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Texas Oncology PA	L05606	Fort Worth	16	11/20/07
Throughout Tx	ERM Remediation & Construction Management-Southwest LLC	L05877	Houston	04	11/15/07
Throughout Tx	H&G Inspection Company Inc DBA Statewide Maintenance Company	L02181	Houston	220	11/30/07
Throughout Tx	HVJ Associates Inc	L03813	Houston	35	11/19/07
Throughout Tx	Cardiovascular Specialist PA	L05507	Lewisville	14	11/30/07
Throughout Tx	Master Industries Inc	L05872	Liberty	11	12/03/07
Throughout Tx	Deep Well Tubular Service Inc	L04462	Midland	08	11/26/07
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	27	11/28/07
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	135	11/21/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	39	12/03/07
Throughout Tx	Tracerco	L03096	Pasadena	64	11/16/07
Throughout Tx	Turner Specialty Services LLC	L05417	Pasadena	31	11/30/07
Throughout Tx	Century Inspection Inc	L00062	Ponder	104	11/14/07
Throughout Tx	Southwest Research Institute	L00775	San Antonio	77	11/15/07
Throughout Tx	Clough Harbour & Associates LLP	L05355	Sanger	21	11/14/07
Throughout Tx	Ludlum Measurements Inc	L01963	Sweetwater	78	11/15/07
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	50	11/16/07
Throughout Tx	Hardin Tubular Sales Inc	L05224	Victoria	03	11/28/07
Tomball	Northwest Houston Heart Center	L05958	Tomball	01	11/20/07
Wichita Falls	North Texas Cardiology Center LLP DBA North Texas Cardiology Center	L05443	Wichita Falls	07	11/29/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Amarillo	Amarillo Diagnostic Clinic	L04085	Amarillo	24	11/26/07
Cleburne	Johns Manville	L01482	Cleburne	21	11/29/07
Dallas	Tenet Hospitals Limited DBA Doctors Hospital of Dallas	L01366	Dallas	48	11/14/07
Throughout Tx	All Tech Inspection	L04974	Corpus Christi	12	11/16/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Channelview	Equistar Chemicals LP	L00064	Channelview	43	11/15/07
Throughout Tx	M-I LLC	L02761	Houston	09	11/15/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200706111
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 5, 2007

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Texas Department of Insurance

Company Licensing

Application to add the doing business name of BRAVO HEALTH TEXAS, INC. to ELDER HEALTH TEXAS, INC., a domestic health maintenance organization (HMO). The home office is in San Antonio, Texas.

Application for incorporation to the State of Texas by DAVITA VILLAGE HEALTH INSURANCE COMPANY OF TEXAS, INC., a domestic life, accident and/or health company. The home office is in Kingwood, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200706123
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 5, 2007

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Texas Lottery Commission

Instant Game Number 1011 "Find the 9's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1011 is "FIND THE 9'S". The play style is "match 3 of 6 with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1011 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1011.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $3.00, $5.00, $30.00, $50.00, $300 and 9.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1011 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$30.00	THIRTY
$50.00	FIFTY
$300	THR HUND
9	NINE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1011 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
NIN	$9.00
NNT	$19.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $9.00 or $19.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $90.00 or $300.

I. High-Tier Prize - A prize of $999.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1011), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1011-0000001-001.

L. Pack - A pack of "FIND THE 9'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 146 to 150 will be on the last page with backs exposed. Tickets 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIND THE 9'S" Instant Game No. 1011 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FIND THE 9'S" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 matching amounts in the play area, the player wins that amount. If a player reveals any 9 play symbols in the play area, the player wins the corresponding prize in the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain two sets of three matching prize amounts.

C. No ticket will contain 4 or more like prize amounts.

D. No ticket will contain more than four "9" play symbols.

E. No ticket will contain one or more "9" symbols and three like prize symbols.

F. The "9" play symbol will only appear on intended winning tickets as dictated by the prize structure.

G. Tickets can only win once (and will win only the highest amount shown).

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 9'S" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $9.00, $19.00, $30.00, $50.00, $90.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $90.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIND THE 9'S" Instant Game prize of $999, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIND THE 9'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 1011. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1011 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	2,520,000	8.00
$2	940,800	21.43
$3	403,200	50.00
$5	235,200	85.71
$9	168,000	120.00
$19	67,200	300.00
$30	21,000	960.00
$50	12,600	1,600.00
$90	10,668	1,889.76
$300	420	48,000.00
$999	168	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.60. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1011 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1011, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Instant Game Number 1022 "$250,000 Bingo"

The Texas Lottery Commission filed for publication Instant Game Number 1022 "$250,000 Bingo". The document was published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 8016). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register.* Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1022.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1022), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1022-0000001-001.

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Kimberly L. Kiplin
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Texas Lottery Commission
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Instant Game Number 1023 "The Flintstones"

The Texas Lottery Commission filed for publication Instant Game Number 1023 "The Flintstones". The document was published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 8024). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register.* Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1023.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1023), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1023-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Instant Game Number 1026 "Blazin' Hot Bucks"

The Texas Lottery Commission filed for publication Instant Game Number 1026 "Blazin' Hot Bucks". The document was published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 8028). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register.* Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1026.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1026), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1026-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 29, 2007

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Instant Game Number 1027 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1027 is "WEEKLY GRAND". The play style for Game 1 is "yours beats theirs"; the play style for Game 2 is "key symbol match"; and the play style for Game 3 is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1027 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1027.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, GRAND SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, MONEY BAG SYMBOL and TOP HAT SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1027 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
GRAND SYMBOL	WEEK
CLOVER SYMBOL	CLVR
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
MONEY BAG SYMBOL	MBAG
TOP HAT SYMBOL	TPHAT

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1027 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4) digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $300.

I. High-Tier Prize- A prize of $1,000/wk ($1,000 per week for 20 years).

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1027), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1027-0000001-001.

L. Pack - A pack of "WEEKLY GRAND" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WEEKLY GRAND" Instant Game No. 1027 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, if the player's YOUR NUMBER beats THEIR NUMBER in any one row across, the player will win the prize for that row. If the player reveals the GRAND symbol, the player will win $1,000 per week for 20 years. In Game 2, if the player matches 3 like prize amounts, the player will win that prize. If the player reveals 3 GRAND symbols, the player will win $1,000 per week for 20 years. In Game 3, if the player matches 2 out of 3 play symbols, the player will win $20 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 15 (fifteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 15 (fifteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No three or more like non-winning prize symbols on a ticket.

B. Consecutive non-winning tickets will not have identical play data, spot for spot.

C. The $300 and GRAND prize symbols will appear on every ticket unless otherwise restricted.

D. The GRAND prize symbol may only be used in Games 1 and 2.

E. Non-winning prize symbols will not match a winning prize symbol on a ticket.

F. Game 1: No ties between YOUR NUMBER play symbols and THEIR NUMBER play symbols in a row.

G. Game 1: No duplicate rows on a ticket.

H. Game 1: No duplicate non-winning prize symbols on a ticket.

I. Game 2: No 4 or more of a kind.

J. Game 3: There will never be 3 matching symbols in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. When claiming a "WEEKLY GRAND" Instant Game prize of $1,000 per week for 20 years, the claimant must choose one of four (4) payment options for receiving his prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 827) payment process. With this plan, a payment of $1,000.00 less Federal withholding will be made once a week for twenty years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of $4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Quarterly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of $52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 33,600,000 tickets in the Instant Game No. 1027. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1027 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	4,569,600	7.35
$4	3,091,200	10.87
$5	201,600	166.67
$10	336,000	100.00
$20	201,600	166.67
$40	191,520	175.44
$300	10,640	3,157.89
$1,000/WK	4	8,400,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.91. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1027 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1027, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Instant Game Number 1029 "Quick 7's"

The Texas Lottery Commission filed for publication Instant Game Number 1029 "Quick 7's". The document was published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8201). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register.* Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1029.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1029), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1029-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Instant Game Number 1030 "Strike It Rich"

The Texas Lottery Commission filed for publication Instant Game Number 1030 "Strike It Rich". The document was published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8205). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register.* Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1030.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1030), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1030-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Instant Game Number 1033 "Hot Slots"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1033 is "HOT SLOTS". The play style is "slots-straight line with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1033 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1033.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: DIAMOND SYMBOL, STAR SYMBOL, BANANA SYMBOL, BELL SYMBOL, MELON SYMBOL, POT OF GOLD SYMBOL, HORSESHOE SYMBOL, DOLLAR SYMBOL, GRAPE SYMBOL, SEVEN SYMBOL, CHERRY SYMBOL, WIN SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100 and $1000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1033 - 1.2D

PLAY SYMBOL	CAPTION
DIAMOND SYMBOL	DMD
STAR SYMBOL	STR
BANANA SYMBOL	BNA
BELL SYMBOL	BEL
MELON SYMBOL	MEL
POT OF GOLD SYMBOL	GLD
HORSESHOE SYMBOL	HSH
DOLLAR SYMBOL	DLR
GRAPE SYMBOL	GRP
SEVEN SYMBOL	SVN
CHERRY SYMBOL	CHY
WIN SYMBOL	WIN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1033 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $100.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1033), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1033-0000001-001. .

L. Pack - A pack of "HOT SLOTS" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed. .

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT SLOTS" Instant Game No. 1033 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HOT SLOTS" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) Play symbols. If a player reveals 3 matching symbols within a GAME, the player wins PRIZE shown for that GAME. If a player reveals a "WIN" symbol, the player wins PRIZE shown for that GAME instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 20 (twenty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning games on a ticket (in any order).

D. Non-winning prize symbols will never be the same as a winning prize symbol.

E. The WIN (auto win) play symbol will never appear more than once on a ticket.

F. There will be many near wins on a ticket.

G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOT SLOTS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present

the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $40.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOT SLOTS" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOT SLOTS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HOT SLOTS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "HOT SLOTS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1033. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1033 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,209,600	8.33
$2	537,600	18.75
$4	235,200	42.86
$5	67,200	150.00
$10	67,200	150.00
$20	33,600	300.00
$40	18,900	533.33
$100	2,184	4,615.38
$1,000	168	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.64. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1033 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1033, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200705971
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 30, 2007

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Instant Game Number 1091 "Big Money Bingo"

The Texas Lottery Commission filed for publication Instant Game Number 1091 "Big Money Bingo". The document was published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 8033). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register.* Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1091.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1091), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1091-0000001-001.

TRD-200705944
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 29, 2007

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Instant Game Number 1096 "Instant Bingo"

The Texas Lottery Commission filed for publication Instant Game Number 1096 "Instant Bingo". The document was published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 8040). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register.* Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1096.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1096), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1096-0000001-001.

TRD-200705945
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 29, 2007

♦ ♦ ♦

Instant Game Number 1097 "Bonus Cashword"

The Texas Lottery Commission filed for publication Instant Game Number 1097 "Bonus Cashword". The document was published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 8048). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register.* Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1097.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1097), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1097-0000001-001.

TRD-200705946
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 29, 2007

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 3, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of The Royal Bank of Scotland plc for Retail Electric Provider (REP) Certification, Docket Number 35082 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 21, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35082.

TRD-200706108
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2007

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Notice of Application for Amendment to Service Provider Certificates of Operating Authority

On November 26, 2007, Birch Telecom, Inc. (Birch) , Birch Telecom of Texas, Ltd., L.L.P., Ionex Communications South, Inc., and Access Integrated Networks, Inc. (AIN) filed an application with the Public Utility Commission of Texas (commission) to amend their service provider certificates of operating authority (SPCOA) numbered 60400, 60008, and 60495. Applicants intend to reflect a change in ownership/control whereby AIN and Birch entered into a purchase agreement. When the transfer is consummated, Birch will survive as a wholly-owned subsidiary of AIN.

The Application: Application of Birch Telecom, Inc., Birch Telecom of Texas, L.L.P., Ionex Communications South, Inc., and Access Integrated Networks, Inc. for an Amendment to their Service Provider Certificates of Operating Authority, Docket Number 35057.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 19, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35057.

TRD-200706084
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2007

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Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 30, 2007, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of Matrix Business Technologies for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 35078.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service fund-

ing to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. Matrix Business Technologies seeks ETC/ETP designation in the local exchange of AT&T Texas. The Company holds Service Provider Certificate of Operating Authority No. 60108.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by December 28, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 35078.

TRD-200706085
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2007

♦ ♦ ♦

Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of AT&T Texas's application filed with the Public Utility Commission of Texas (commission) on November 14, 2007, to withdraw services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of AT&T Texas to Withdraw Group Alerting and Public Emergency Reporting System, Emergency Reporting Systems, and Emergency Alerting Service; Docket Number 35013.

The Application: Southwestern Bell Telephone d/b/a AT&T Texas (AT&T Texas) has filed an application to withdraw Group Alerting and Public Emergency Reporting System, Emergency Reporting Systems and Emergency Alerting Service from its General Exchange Tariff due to the discontinuance of conference alerting equipment by the manufacturer. According to AT&T, there are no customers using these services. This proceeding was docketed and suspended on November 15, 2007, to allow adequate time for review and intervention.

Persons wishing to comment on this application or intervene should contact the Public Utility Commission of Texas, by January 14, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 35013.

TRD-200706083
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2007

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of AT&T Texas's application filed with the Public Utility Commission of Texas (commission) on November 15, 2007, to withdraw services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of AT&T Texas to Grandfather and Withdraw Small System Group Alerting, Large System Group Alerting, and One-Way Inward Reporting Fire System; Docket Number 35018.

The Application: On November 15, 2007, Southwestern Bell Telephone d/b/a AT&T Texas (AT&T Texas) filed an application to grandfather and withdraw Small System Group Alerting, Large System Group Alerting, and One-Way Inward Reporting Fire System from its General Exchange Tariff due to the discontinuance of conference alerting equipment by the manufacturer. Current customers will be grandfathered until June 15, 2008 in order to provide them with sufficient time to find alternative solutions should the so desire. This proceeding was docketed and suspended on November 16, 2007, to allow adequate time for review and intervention.

Persons wishing to comment on this application or intervene should contact the Public Utility Commission of Texas, by January 22, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 35018.

TRD-200706125
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2007

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on October 26, 2007, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Petition of the Port Mansfield Exchange for Expanded Local Calling Service, Project Number 34954.

The petitioners in the Port Mansfield exchange request ELCS to the exchanges of Harlingen, Lyford, and Raymondville.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 31, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 34954.

TRD-200706124
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2007

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Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's

Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

Section 825.108(a) of the Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15th of each year containing the following information: (1) the retirement system's fiscal transactions for the preceding fiscal year; (2) the amount of the system's accumulated cash and securities; and (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108(b) of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1st of each year containing the balance sheet as of August 31st of the preceding school year and containing an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following reports as required by §825.108(a) and (b) of the Government Code:

Exhibit I

Statement of Fiduciary Net Assets

AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
ASSETS		
Cash:		
Cash in State Treasury	$ 710,706,498	$ 162,086,715
Cash in Bank	185,569,622	
Cash on Hand	3,128,352	
TOTAL CASH	$ 899,404,472	$ 162,086,715
Receivables:		
Sale of Investments	$ 57,001,840	$
Interest and Dividends	448,536,270	3,030,242
Member and Retiree	63,290,874	32,595,397
Reporting Entities	17,905,406	6,332,114
Other	397,048	9,868,528
Due from State's General Fund	61,383,142	29,292,434
Due from Employees Retirement System of Texas	686,833	
TOTAL RECEIVABLES	$ 649,201,413	$ 81,118,715
Investments:		
Short-Term	$ 1,682,728,425	$ 494,900,902
Equities	70,255,220,452	
Fixed Income	31,358,468,837	
Alternative Investments	7,824,404,404	
TOTAL INVESTMENTS	$111,120,822,118	$ 494,900,902
Invested Securities Lending Collateral	$ 23,114,634,985	$
Capital Assets:		
Land	$ 1,658,310	$
Building, Capital Projects and Equipment, at Cost, Net of Accumulated Depreciation	27,523,958	
TOTAL CAPITAL ASSETS	$ 29,182,268	$ -0-
TOTAL ASSETS	$135,813,245,256	$ 738,106,332

FIDUCIARY FUND TYPES	TOTALS	
Agency Funds	**2007**	**2006**
$ 725	$ 872,793,938	$ 724,328,634
	185,569,622	17,508,687
	3,128,352	3,731,456
$ 725	$ 1,061,491,912	$ 745,568,777
$	$ 57,001,840	$ 648,751,739
	451,566,512	393,697,631
	95,886,271	91,166,767
14,826,176	39,063,696	39,187,709
	10,265,576	22,459,089
	90,675,576	34,103,009
	686,833	663,277
$ 14,826,176	$ 745,146,304	$ 1,230,029,221
$	$ 2,177,629,327	$ 4,446,201,346
	70,255,220,452	65,836,033,359
	31,358,468,837	27,183,486,889
	7,824,404,404	4,263,373,772
$ -0-	$111,615,723,020	$ 101,729,095,366
$	$ 23,114,634,985	$ 10,730,541,452
$	$ 1,658,310	$ 1,658,310
	27,523,958	28,286,274
$ -0-	$ 29,182,268	$ 29,944,584
$ 14,826,901	$136,566,178,489	$ 114,465,179,400

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Statement of Fiduciary Net Assets

AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)
(concluded)

Exhibit I

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
LIABILITIES		
Accounts Payable	$ 4,895,004	$ 347,029
Accounts Payable-State's General Fund	3,227	
Benefits Payable	482,492,677	
Health Care Claims Payable		114,900,819
Reinstatement Installment Receipts	31,527,265	
Investments Purchased Payable	43,358,581	
Securities Lending Collateral	23,114,634,985	
Due to Employees Retirement System of Texas	4,207,017	
Compensable Absences Payable	3,326,651	61,556
Funds Held for Others		
TOTAL LIABILITIES	$ 23,684,445,407	$ 115,309,404
NET ASSETS HELD IN TRUST FOR PENSION/OTHER POST-EMPLOYMENT BENEFITS	$112,128,799,849	$ 622,796,928

FIDUCIARY FUND TYPES	TOTALS	
Agency Funds	2007	2006
$	$ 5,242,033	$ 4,008,921
14,826,176	14,829,403	14,570,025
	482,492,677	460,899,265
	114,900,819	115,194,058
	31,527,265	34,425,985
	43,358,581	2,397,062,425
	23,114,634,985	10,730,541,452
	4,207,017	3,927,278
	3,388,207	2,600,211
725	725	625
$ 14,826,901	$ 23,814,581,712	$ 13,763,230,245
$ -0-	$112,751,596,777	$100,701,949,155

Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)

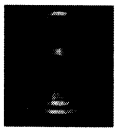

Exhibit II

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan	Health Benefits Trust Fund Supplemental Compensation
ADDITIONS:			
Contributions:			
Member	$ 1,862,595,865	$ 154,823,968	$
State	1,471,131,358	238,190,720	
Reporting Entities	282,077,713	136,008,512	
Health Care Premiums		323,957,945	
TOTAL CONTRIBUTIONS	$ 3,615,804,936	$ 852,981,145	$ -0-
Investment Income:			
From Investing Activities:			
Net Appreciation in Fair Value of Investments	$ 11,232,429,170	$	$
Interest	1,629,566,321	32,671,539	
Dividends	1,413,189,832		
TOTAL INVESTING ACTIVITIES INCOME	$ 14,275,185,323	$ 32,671,539	$ -0-
Less Investing Activity Expenses	(20,942,402)		
NET INCOME FROM INVESTING ACTIVITIES	$ 14,254,242,921	$ 32,671,539	$ -0-
From Securities Lending Activities:			
Securities Lending Income	$ 871,885,933	$	$
Securities Lending Expenses:			
Borrower Rebates	(820,326,962)		
Management Fees	(7,255,314)		
Net Income from Securities Lending Activities	$ 44,303,657	$ -0-	$ -0-
TOTAL NET INVESTMENT INCOME	$ 14,298,546,578	$ 32,671,539	$ -0-
Other Additions:			
Reinstatement of Contribution Refunds	$ 45,003,113	$	$
Reinstatement Fees	41,494,298		
Legislative Appropriations (Lapsed) for Supplemental Compensation			(455)
Legislative Appropriations for Excess Benefits	1,453,605		
Miscellaneous Revenues	5,405		
On Behalf Fringe Benefits Paid by the Federal Government		52,329,617	
On Behalf Fringe Benefits Paid by the State		55,932	
TOTAL OTHER ADDITIONS	$ 87,956,421	$ 52,385,549	$ (455)
TOTAL ADDITIONS	$ 18,002,307,935	$ 938,038,233	$ (455)

TOTALS	
2007	2006
$ 2,017,419,833	$ 1,840,598,930
1,709,322,078	1,547,768,421
418,086,225	390,350,479
323,957,945	322,501,649
$ 4,468,786,081	$ 4,101,219,479
$ 11,232,429,170	$ 6,326,056,726
1,662,237,860	1,355,886,737
1,413,189,832	1,276,009,852
$ 14,307,856,862	$ 8,957,953,315
(20,942,402)	(19,099,395)
$ 14,286,914,460	$ 8,938,853,920
$ 871,885,933	$ 550,074,665
(820,326,962)	(510,719,284)
(7,255,314)	(5,903,558)
$ 44,303,657	$ 33,451,823
$ 14,331,218,117	$ 8,972,305,743
$ 45,003,113	$ 106,755,570
41,494,298	46,800,847
(455)	(1,358,281)
1,453,605	1,041,961
5,405	769
52,329,617	34,611,607
55,932	53,283
$ 140,341,515	$ 187,905,756
$ 18,940,345,713	$ 13,261,430,978

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Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)

(concluded)

Exhibit II

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
	Pension Trust Fund	**Health Benefits Trust Fund Retired Plan**	**Health Benefits Trust Fund Supplemental Compensation**
DEDUCTIONS:			
Benefits	$ 5,805,583,173	$	$
Refunds of Contributions	277,932,219		
Health Care Claims		742,293,147	
Health Care Claims Processing		33,407,937	
Administrative Expenses, Net of Investing Activity Expenses	27,502,276	2,526,189	
Supplemental Health Care Compensation			(455)
Excess Benefits	1,453,605		
TOTAL DEDUCTIONS	$ 6,112,471,273	$ 778,227,273	$ (455)
Net Increase	$ 11,889,836,662	$ 159,810,960	$ -0-
NET ASSETS HELD IN TRUST FOR PENSION/OTHER POST-EMPLOYMENT BENEFITS - BEGINNING OF YEAR	$ 100,238,963,187	$ 462,985,968	$ -0-
NET ASSETS HELD IN TRUST FOR PENSION/OTHER POST-EMPLOYMENT BENEFITS - END OF YEAR	$ 112,128,799,849	$ 622,796,928	$ -0-

TOTALS	
2007	**2006**
$ 5,805,583,173	$ 5,581,264,678
277,932,219	265,487,479
742,293,147	687,086,291
33,407,937	31,975,150
30,028,465	28,957,507
(455)	(1,358,281)
1,453,605	1,041,961
$ 6,890,698,091	$ 6,594,454,785
$ 12,049,647,622	$ 6,666,976,193
$ 100,701,949,155	$ 94,034,972,962
$ 112,751,596,777	$ 100,701,949,155

Statement of Net Assets

PROPRIETARY FUND

AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)

Exhibit III

	TRS-ActiveCare Enterprise Fund	
	2007	2006
ASSETS		
Current Assets:		
Cash:		
Cash in State Treasury	$ 85,476,716	$ 45,705,839
TOTAL CASH	$ 85,476,716	$ 45,705,839
Accounts Receivable:		
Investment Interest	$ 2,280,305	$ 1,933,969
Health Care Premiums	38,911,959	33,091,080
TOTAL ACCOUNTS RECEIVABLE	$ 41,192,264	$ 35,025,049
Short-Term Investments	$ 411,892,046	$ 392,000,000
TOTAL ASSETS	$ 538,561,026	$ 472,730,888
LIABILITIES		
Current Liabilities:		
Accounts Payable	$ 340,078	$ 435,251
Premiums Payable to HMOs	4,790,124	4,038,253
Health Care Claims Payable	98,044,935	88,978,955
Compensable Absences Payable	90,826	80,224
TOTAL LIABILITIES	$ 103,265,963	$ 93,532,683
NET ASSETS		
Unrestricted	$ 435,295,063	$ 379,198,205
TOTAL NET ASSETS	$ 435,295,063	$ 379,198,205

Statement of Revenues, Expenses, and Changes in Fund Net Assets

PROPRIETARY FUND

FOR THE FISCAL YEAR ENDED AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)

Exhibit IV

	TRS-ActiveCare Enterprise Fund	
	2007	2006
OPERATING REVENUES:		
Health Care Premiums	$ 939,694,028	$ 861,464,205
Administrative Fees	184,937	183,470
TOTAL OPERATING REVENUES	$ 939,878,965	$ 861,647,675
OPERATING EXPENSES:		
Health Care Claims	$ 801,148,962	$ 708,972,484
Health Care Claims Processing	48,177,777	53,013,214
Premium Payments to HMOs	58,742,363	49,466,150
Administrative Expenses	1,775,831	1,680,952
TOTAL OPERATING EXPENSES	$ 909,844,933	$ 813,132,800
OPERATING INCOME	$ 30,034,032	$ 48,514,875
NONOPERATING REVENUES:		
Investment Income	$ 26,016,380	$ 18,650,516
On Behalf Fringe Benefits Paid by the State	46,446	40,979
TOTAL NONOPERATING REVENUES	$ 26,062,826	$ 18,691,495
Change in Net Assets	$ 56,096,858	$ 67,206,370
TOTAL NET ASSETS - BEGINNING	$ 379,198,205	$ 311,991,835
TOTAL NET ASSETS - ENDING	$ 435,295,063	$ 379,198,205

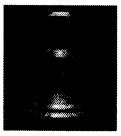


Exhibit V

Statement of Cash Flows

PROPRIETARY FUND

FOR THE FISCAL YEAR ENDED AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)

	TRS-ActiveCare Enterprise Fund	
	2007	2006
CASH FLOWS FROM OPERATING ACTIVITIES:		
Receipts from Health Care Premiums	$ 933,730,270	$ 862,263,570
Receipts from Long-Term Care Administrative Fees	184,937	183,470
Payments for Administrative Expenses	(1,671,075)	(1,631,195)
Payments for Health Care Claims	(792,092,412)	(697,436,878)
Payments for Health Care Claims Processing	(48,168,348)	(53,043,380)
Payments for HMO Premiums	(57,990,492)	(48,895,652)
NET CASH PROVIDED BY OPERATING ACTIVITIES	$ 33,992,880	$ 61,439,935
CASH FLOWS FROM INVESTING ACTIVITIES:		
Interest Received	$ 25,670,043	$ 17,764,360
NET CASH PROVIDED BY INVESTING ACTIVITIES	$ 25,670,043	$ 17,764,360
Net Increase in Cash	$ 59,662,923	$ 79,204,295
CASH AND CASH EQUIVALENTS - SEPTEMBER 1	$ 437,705,839	$ 358,501,544
CASH AND CASH EQUIVALENTS - AUGUST 31	$ 497,368,762	$ 437,705,839
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES		
Operating Income	$ 30,034,032	$ 48,514,875
Adjustments to Reconcile Operating Income to Net Cash Provided (Used) by Operating Activities:		
(Increase) Decrease in Health Care Premiums Receivable	$ (5,820,879)	$ 715,996
Increase in Premiums Payable to HMOs	751,871	570,499
Increase in Health Care Claims Payable	9,065,980	11,505,439
Increase (Decrease) in Accounts Payable	(95,172)	84,785
Increase in Compensable Absences Payable	10,602	7,362
On Behalf Fringe Benefits Paid by the State	46,446	40,979
Total Adjustments	$ 3,958,848	$ 12,925,060
Net Cash Provided by Operating Activities	$ 33,992,880	$ 61,439,935

Balance Sheet

GOVERNMENTAL FUNDS

AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)

Exhibit VI

	403(b) Certification Program Special Revenue Fund	Total Governmental Funds*
	2007	2006
ASSETS		
Current Assets:		
Cash in State Treasury	$ 383,016	$ 224,363
Cash on Hand	3,000	
Accounts Receivable	4,349	932
Legislative Appropriations		37,750
TOTAL ASSETS	$ 390,365	$ 263,045
LIABILITIES AND FUND BALANCE		
Liabilities		
Current Liabilities:		
Accounts Payable	$ 8,000	$ 39,750
Fund Balance Reserved for:		
Administrative Expenditures	$ 382,365	$ 223,295
TOTAL LIABILITIES AND FUND BALANCE	$ 390,365	$ 263,045

**The Health Care Comparability Study General Fund reported Legislative Appropriations Assets of $37,750 and Accounts Payable Liabilities of $37,750 in the August 31, 2006 comparative totals. There was no General Fund for fiscal year 2007.*

Statement of Revenues, Expenditures, and Changes in Fund Balance

GOVERNMENTAL FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)

Exhibit VII

	403(b) Certification Program Special Revenue Fund	Total Governmental Funds*
	2007	2006
REVENUES:		
Certification Fees	$ 171,000	$ 30,000
Investment Income	12,070	9,532
Legislative Appropriations		250,000
TOTAL REVENUES	$ 183,070	$ 289,532
EXPENDITURES:		
Administrative Expenditures	$ 24,000	$ 274,000
TOTAL EXPENDITURES	$ 24,000	$ 274,000
Excess of Revenues Over Expenditures	$ 159,070	$ 15,532
FUND BALANCE - BEGINNING	$ 223,295	$ 207,763
FUND BALANCE - ENDING	$ 382,365	$ 223,295

**The Health Care Comparability Study General Fund reported Legislative Appropriations Revenues of $250,000 and Administrative Expenditures of $250,000 in the August 31, 2006 comparative totals. There was no General Fund for fiscal year 2007.*

Combining Statement of Changes in Assets and Liabilities

AGENCY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2007

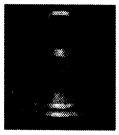


Exhibit A

	Balances September 1, 2006	Additions	Deductions	Balances August 31, 2007
UNAPPROPRIATED RECEIPTS				
Collections on Behalf of the State's General Fund				
Assets:				
Cash in State Treasury	$	$223,078,883	$223,078,883	$
Accounts Receivable - Reporting Entities	14,570,025	14,826,176	14,570,025	14,826,176
TOTAL ASSETS	$14,570,025	$237,905,059	$237,648,908	$14,826,176
Liabilities:				
Accounts Payable - State's General Fund	$14,570,025	$ 14,826,176	$ 14,570,025	$14,826,176
OTHER AGENCY FUNDS				
Employees' Savings Bond Account				
Assets:				
Cash in State Treasury	$ 625	$ 8,175	$ 8,075	$ 725
Liabilities:				
Funds Held for Others	$ 625	$ 8,100	$ 8,000	$ 725
TOTALS - ALL AGENCY FUNDS				**(Exhibit I)**
Assets:				
Cash in State Treasury	$ 625	$223,087,058	$223,086,958	$ 725
Accounts Receivable - Reporting Entities	14,570,025	14,826,176	14,570,025	14,826,176
TOTAL ASSETS	$14,570,650	$237,913,234	$237,656,983	$14,826,901
Liabilities:				
Accounts Payable - State's General Fund	$14,570,025	$ 14,826,176	$ 14,570,025	$14,826,176
Funds Held for Others	625	8,100	8,000	725
TOTAL LIABILITIES	$14,570,650	$ 14,834,276	$ 14,578,025	$14,826,901

Rate of Return on Assets

YEAR ENDED AUGUST 31, 2007

Exhibit B

	Pension Trust Fund	Health Care Plans and 403(b) Program
Cash and Short-Term Investments	5.38%	5.60%
Long-Term Investments *		
Equities	17.00%	
Fixed Income	5.60%	
Alternative Investments	26.66%	

* Rates for Long-Term Investments include appreciation in market values.

GRS

Gabriel Roeder Smith & Company
Consultants & Actuaries

5605 N. MacArthur Blvd.
Suite 870
Irving, TX 75038-2631

469.524.0000 phone
469.524.0003 fax
www.gabrielroeder.com

October 29, 2007

BOARD OF TRUSTEES
Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2007

We certify that the information included herein and contained in the 2007 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2007.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. Carter and Mr. Newton are members of the American Academy of Actuaries, and are also Enrolled Actuaries. All are experienced in performing valuations for large public retirement systems.

Actuarial Valuations

The primary purpose of the valuation report is to determine the adequacy of the current State contribution rate through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

Financing Objective of the Plan

Contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll. The employee and State contribution rates have been set by Law and are intended to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 31 years.

Progress Toward Realization of Financing Objective

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2007, the System's under-funded status has decreased to $12.5 billion from $13.7 billion as of August 31, 2006. This decrease in the UAAL is due to a large gain on the actuarial value of assets that resulted from good investment results for FY 2007 and the recognition of prior years' deferred investment gains.

This valuation shows a normal cost equal to 10.40% of pay. The State increased its contribution rate to 6.58% of pay as of September 1, 2007, which combined with the member contribution rate of 6.40% of pay provides a total contribution rate of 12.98% of pay. Therefore, there is 2.58% of pay available to amortize the UAAL. The contributions provided by this portion of the contribution rate are sufficient to amortize the current unfunded actuarial accrued liabilities of the System over a period of 27.4 years, which is less than the statutory limit of 31 years.

The actuarial valuation report as of August 31, 2007 reveals that while the System has an unfunded liability, it still has a funded ratio (the ratio of actuarial assets to actuarial accrued liability) of 89.2%. In addition, the System continues to defer a net investment gain from prior years' investment experience. Therefore, in the absence of actuarial losses in the future, the funded status of the System should improve as these deferred investment gains are recognized.

The System earned a 14.4% return on a dollar-weighted market value of assets basis for the plan year ending August 31, 2007, and the System experienced a $4.14 billion gain on the actuarial value of assets. In addition to the large asset gain, the System is still deferring $8.7 billion in investment gains to be recognized in future valuations.

In the absence of significant actuarial losses and/or additional benefit enhancements, over the near term the contribution rate needed to amortize the UAAL will decrease. If the System can earn 8% during fiscal year 2008, it is expected that the GASB Annual Required Contribution rate will drop below the statutory minimum of 6.00% at the next valuation. Note that the actual contribution rate would not be less than the statutory 6.00% minimum contribution rate.

Plan Provisions

The plan provisions used in the actuarial valuation are described in Table 21 of the valuation report. This valuation reflects the changes to plan provisions as enacted by the 80th Texas Legislature.

The 2007 legislation changed the benefit provisions as follows:

1. Effective September 1, 2007 the State contribution rate was increased from 6.00% to 6.58% of pay. The new law also requires the State contribution rate to be at least equal to the member contribution rate.
2. The legislature authorized the TRS Board to make a one time payment (13th check) to TRS retirees in January 2008 based on the following conditions:
   (i) The August 31, 2007 valuation must show the 13th check will not increase the funding period to more than 31 years,
   (ii) If necessary to meet this condition, the employee contribution rate may be increased,
   (iii) To be eligible for the 13th check, the retiree must have retired on or before December 31, 2006, and
   (iv) The 13th check will be equal to the lesser of the retiree's December 2006 payment and $2,400.

This valuation has found that the condition for the 13th check has been met and that no increase in the employee contribution rate is necessary in order to meet this condition. Therefore the 13th check can be paid in January, 2008, and the results disclosed in this report reflect the present value as of August 31, 2007 of that payment.

It should be noted that the 13th check would not have been possible if the State contribution rate had not been increased.

Disclosure of Pension Information

Effective for the fiscal year ending August 31, 1996, the Board of Trustees adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25. The required disclosure information is included in the body of the valuation report.

Actuarial Methods and Assumptions

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 22 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actual experience for the four year period ending August 31, 2003 and were adopted on May 21, 2004. The next experience investigation is scheduled to begin this winter. This valuation includes some minor changes in assumptions that were adopted in 2005 as a result of the most recent actuarial audit, but there was no material impact from those changes.

The results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods. The actuarial calculations are intended to provide information for rational decision making.

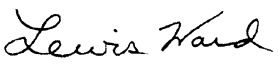
In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations. The actuarial assumptions and methods used in this report comply with the parameters for disclosure that appear in GASB 25.

Data

In preparing the August 31, 2007 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior years' data. In conjunction with the actuarial audit performed prior to the 2005 valuation, effective with the 2005 valuation, certain miscellaneous changes were made in the handling of member records with missing data. However, none of these changes had any material impact on the actuarial results.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,
Gabriel, Roeder, Smith & Company



W. Michael Carter, FSA, EA, MAAA
Senior Consultant

Lewis Ward
Consultant

Joe Newton, FSA, EA, MAAA
Consultant

Gabriel Roeder Smith & Company

GRS

Gabriel Roeder Smith & Company
Consultants & Actuaries

5605 N. MacArthur Blvd.
Suite 870
Irving, TX 75038-2631

469.524.0000 phone
469.524.0003 fax
www.gabrielroeder.com

October 25, 2007

BOARD OF TRUSTEES
Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: Actuary's Certification of the Actuarial Valuation of TRS-Care as of August 31, 2007

We certify that the information included herein and contained in the 2007 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the employer financed retiree health benefits provided through TRS-Care, a benefit program designed to provide post retirement medical benefits for certain members of the Teacher Retirement System of Texas (TRS).

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. Newton is a member of the American Academy of Actuaries. Both are experienced in performing valuations for large public healthcare and retirement systems.

Actuarial Valuation

The actuarial calculations were prepared for purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB). The calculations reported herein have been made on a basis consistent with our understanding of these accounting standards. Determinations of the liability associated with the benefits described in this report for purposes other than satisfying the financial reporting requirements of TRS-Care and participating employers may produce significantly different results.

The valuation was prepared as of August 31, 2007. This is the first actuarial valuation for TRS-Care.

Current Funding Policy

Currently, the benefits of TRS-Care are financed through a combination of retiree premiums and percentage of payroll contributions from active employees, local school districts, and the State (currently 0.65% for active employees, 0.55% for local employers and 1.00% for the State for a total of 2.20%). The current objective is to fund the Trust in order to maintain benefits through individual biennial periods. That is, there is no arrangement into which the participating employers would make contributions to advance-fund the obligation. However, a Trust does exist into which participating employers are making contributions that marginally exceed the annual expected net claim payments and this trust has an asset balance of $623 million as of August 31, 2007. ($623 million represents more than one year of employer provided benefits). These assets are invested in cash and other short-term investments according to the current investment policy.

Consequently, according to GASB Statement 43, the interest discount rate used to calculate the present values and costs of the OPEB must be the long-range expected return on such short-term fixed income instruments. The Board has selected an interest discount rate of 5.25% for this purpose. An explanation of this assumption can be found in the "Actuarial Assumptions and Methods" section of this report.

Progress Towards Funding Objective

Based on this actuarial valuation as of August 31, 2007, the System has an UAAL of $19.1 billion. In addition, the Annual Required Contribution for the year ending August 31, 2007 is 6.03% of payroll, which is significantly higher than the current employer contribution levels of 1.55%.

An important note, while the current contribution is shown to be marginally larger than the current pay-as-you-go costs, that is not expected to be the case for very long. It is projected that the current contribution policy will only be suitable for 2 more years, at which time the contributions will need to increase to sustain the current benefit provisions and reserve levels. In addition, when the contributions are less than the ARC the UAAL will grow from year to year because the amortization schedule will not be met.

The Schedule of Funding Progress in the notes of this report will present multi-year trend information as the information develops over time.

Plan Provisions

The plan provisions used in the actuarial valuation are described in Section E of the valuation report. The plan provisions were in effect at the time of the valuation and are based on the expectations of cost sharing between the employer and plan members. The projection of the benefits for financial reporting does not explicitly incorporate the

potential effects of legal or contractual funding limitations on the pattern of cost sharing between the employer and plan members in the future.

Disclosure of Retiree Medical Information

Effective for the fiscal year ending August 31, 2007, the Board of Trustees adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 43. The required disclosure information is included in the body of the valuation report.

Actuarial Methods and Assumptions

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Section H of the valuation report.

The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. All of the demographic assumptions (rates of retirement, termination and disability) and most of the economic assumptions (general inflation, salary increases, and general payroll growth) used in this OPEB Valuation were identical to those which were adopted by the Board in 2004 after the preparation of an actuarial experience study and used in the respective TRS pension valuation. Since the assumptions were based upon a recent actuarial experience study and they were reasonable for this OPEB Valuation, they were employed in this report.

The results of the actuarial valuation reflect a long term perspective and are dependent on the actuarial assumptions used. In addition, the assumptions are designed to reduce short term volatility in the liabilities and assets. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods. The actuarial calculations are intended to provide information for rational decision making.

In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations. The actuarial assumptions and methods used in this report comply with the parameters for disclosure that appear in GASB 43.

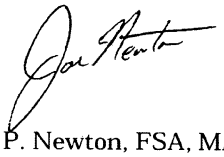
Data

The valuation was based upon information, furnished by TRS, concerning retiree health benefits, members' census, and financial data. Data was checked for internal consistency but was not otherwise audited. Certain demographic and economic assumptions are identical to the set of demographic and economic assumptions adopted by the Board in 2004 based on the 2003 Experience Study of the TRS pension plan. Authorization of the assumptions applicable only to this valuation was granted at the July 2007 Board meeting, and they are disclosed in the assumptions section of this report.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. For further information please see the full actuarial valuation report.

Respectfully submitted,

William J. Hickman
Senior Consultant



Joseph P. Newton, FSA, MAAA
Consultant

Gabriel Roeder Smith & Company

Actuarial Present Value of Future Benefits

PENSION TRUST FUND
ACTUARIAL VALUATION - AUGUST 31, 2007 (With Comparative Totals for August 31, 2006)

	2007	2006
Present Value of Benefits Presently Being Paid:		
Service Retirement Benefits	$ 49,127,012,614	$ 47,342,229,127
Disability Retirement Benefits	867,741,482	868,773,088
Death Benefits	744,775,521	737,960,508
Present Survivor Benefits	193,404,910	191,103,604
13th Check Payable January 2008	359,741,971	N/A
TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID	$ 51,292,676,498	$ 49,140,066,327
Present Value of Benefits Payable in the Future to Present Active Members:		
Service Retirement Benefits	$ 81,124,860,135	$ 73,866,987,834
Disability Retirement Benefits	998,734,203	916,344,099
Termination Benefits	4,683,072,513	4,221,247,677
Death and Survivor Benefits	1,433,711,132	1,319,745,974
TOTAL ACTIVE MEMBER LIABILITIES	$ 88,240,377,983	$ 80,324,325,584
Present Value of Benefits Payable in the Future to Present Inactive Members:		
Inactive Vested Participants		
Retirement Benefits	$ 1,337,890,796	$ 1,180,903,351
Death Benefits	103,845,430	93,646,265
TOTAL INACTIVE VESTED BENEFITS	$ 1,441,736,226	$ 1,274,549,616
Refunds of Contributions to Inactive Non-vested Members	$ 241,750,800	$ 230,309,001
Future Survivor Benefits Payable on Behalf of Present Annuitants	$ 973,143,379	$ 937,244,511
TOTAL INACTIVE LIABILITIES	$ 2,656,630,405	$ 2,442,103,128
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	$ 142,189,684,886	$ 131,906,495,039

Summary of Cost Items

	2007	2006
Actuarial Present Value of Future Benefits	$ 142,189,684,886	$ 131,906,495,039
Present Value of Future Normal Costs	(26,225,963,014)	(23,995,035,833)
Actuarial Accrued Liability	115,963,721,872	107,911,459,206
Actuarial Value of Assets	(103,419,088,392)	(94,217,921,767)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	$ 12,544,633,480	$ 13,693,537,439

Actuarial Present Value of Future Benefits

HEALTH BENEFITS TRUST FUND - RETIRED PLAN
ACTUARIAL VALUATION - AUGUST 31, 2007 *

	2007
Present Value of Benefits Presently Being Paid:	
Future Medical Claims	$ 5,972,310,138
Future Rx Claims	7,232,071,347
Retiree Premiums Collected	(4,875,831,743)
NET PRESENT VALUE OF BENEFITS FOR CURRENT RETIREES	$ 8,328,549,742
Present Value of Benefits Payable in the Future to Present Active Members:	
Future Medical Claims	$ 18,397,223,154
Future Rx Claims	18,381,170,348
Retiree Premiums Collected	(14,154,287,216)
NET PRESENT VALUE OF BENEFITS FOR FUTURE RETIREES	$ 22,624,106,286
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	$ 30,952,656,028

Summary of Cost Items

Actuarial Present Value of Future Benefits	$ 30,952,656,028
Present Value of Future Normal Costs	(11,204,990,717)
Actuarial Accrued Liability	19,747,665,311
Actuarial Value of Assets	(622,796,928)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	$ 19,124,868,383

** August 31, 2007 is the date of the first actuarial valuation for TRS-Care; therefore, there is no August 31, 2006 comparative information.*

These reports include the first actuarial valuation of TRS-Care dated August 31, 2007. This actuarial valuation was prepared for the purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB) and Title 10, Subtitle F, Chapter 2264 Government Code.

TRD-200706095
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Filed: December 4, 2007

♦ ♦ ♦

Texas Department of Transportation

Public Notice - Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* Magazine

The Texas Department of Transportation (department) is authorized by Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, list acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describe the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's mailing list. Written requests may be mailed to the Texas Department of Transportation, Travel Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2009 edition of the *Texas State Travel Guide*, scheduled to be printed and available in January 2009, and the four quarterly issues of the *Texas Events Calendar*, beginning with the Summer 2008 calendar. The Summer 2008 calen-

dar lists events scheduled for June, July, and August 2008. The Fall 2008 calendar lists September, October, and November 2008 events. The Winter 2008-2009 calendar lists December 2008, January 2009, and February 2009 events and the Spring 2009 calendar lists events scheduled for March 2009, April 2009, and May 2009. The department is now accepting advertising for all monthly 2008 issues of *Texas Highways* magazine.

All entities and individuals on the mailing list will be contacted by mail sent out on January 14, 2008 and will have an opportunity to request a media kit. The media kit will contain rate card information, an order form, and samples of the respective travel literature. On and after February 14, 2008 the department will accept all insertion orders (in accordance with 43 TAC §23.10) received prior to the publication deadline on a first-come, first-served basis or until all advertising space is filled. Insertion orders postmarked or received prior to February 14, 2008 for the *Texas State Travel Guide* will not be accepted.

All insertion orders will be stamped with the date they are received. Orders for premium space for the *Texas State Travel Guide* will be accepted only by mail postmarked on or after February 14, 2008. Advertisers must indicate ranked preference on all desired premium positions for the *Texas State Travel Guide.* If more than one insertion order for any premium position is received on the same day, the department will determine selection by a drawing held on February 29, 2008. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The advertising due dates for the *Texas Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Events Calendar* is February 15, 2008 for the Summer 2008 issue; May 16, 2008 for the Fall 2008 issue; August 15, 2008 for the Winter 2008-2009 issue; and November 14, 2008 for the Spring 2009 issue. The deadline for accepting materials for the *Texas Events Calendar* is February 29, 2008 for the Summer 2008 issue; May 30, 2008 for the Fall 2008 issue; August 29, 2008 for the Winter 2008-2009 issue; and November 14, 2008 for the Spring 2009 issue. The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or on a holiday, space and/or materials are due the preceding workday.

The *Texas State Travel Guide* is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns alphabetically, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide also includes sections listing Texas lakes, state parks, state and national forests, and hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

The *Texas Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

Texas Highways magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas based, and that are determined by the department to be of cultural, educational, historical, or recreational interest to *Texas Highways* readers.

The *Texas Accommodations Guide* is the state's official lodging guide and includes information on hotels/motels, condominiums, bed & breakfasts, cabin/guest homes, and guest ranches. This publication is distributed in the standard package sent to requestors seeking information about Texas and also is distributed through the 12 Travel Information Centers operated by the Texas Department of Transportation.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Events Calendar, Texas Highways* magazine, and the *Texas Accommodations Guide* are included in this notice.

TEXAS STATE TRAVEL GUIDE

Year 2009 Rate Base: 800,000
Space Closing: October 3, 2008
Materials Due: October 10, 2008
First Distribution: January 2009

Advertising Rates

ROP:	Gross	Net*
Full Page	$22,540	$19,159
Two Thirds (2/3) Page	$16,102	$13,687
Half (1/2) Page	$13,540	$11,509
One Third (1/3) Page	$ 8,120	$ 6,902
One Sixth (1/6) Page	$ 5,120	$ 4,352
Premium Positions:	**Gross**	**Net***
Cover 2 (Inside Front)	$32,500	$27,625
Cover 3 (Inside Back)	$30,260	$25,721
Cover 4 (Back)	$40,595	$34,506
Spread (Inside Front Cover Inside Back Cover)	$55,040	$46,784

*Commission: 15% to recognized agencies providing camera-ready materials.

Note: All rates are 4-color (no black and white). Run-of-book spreads are 2 times the page rate. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request. Multiple fractional ads will be priced at the equivalent page rate.
Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
Umbrella Plan C: 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by October 10, 2008.

Texas Events Calendar

Advertising Rates/Due Dates

Year 2008/2009 Rate Base: 90,000 Circulation: Spring, Summer, Fall
75,000 Circulation: Winter

Black/White

	1X		2X		4X	
FULL PAGE	$ 1,600.00	$ 1,360.00	$ 1,550.00	$ 1,317.50	$ 1,500.00	$ 1,275.00
HALF PAGE	$ 1,100.00	$ 935.00	$ 1,075.00	$ 913.75	$ 1,025.00	$ 871.25
THIRD PAGE	$ 800.00	$ 680.00	$ 775.00	$ 658.75	$ 725.00	$ 616.25

4-Color

	1X		2X		4X	
FULL PAGE	$ 2,240.00	$ 1,904.00	$ 2,170.00	$ 1,844.50	$ 2,100.00	$ 1,785.00
HALF PAGE	$ 1,540.00	$ 1,309.00	$ 1,505.00	$ 1,279.25	$ 1,435.00	$ 1,219.75
THIRD PAGE	$ 1,120.00	$ 952.00	$ 1,085.00	$ 922.25	$ 1,015.00	$ 862.75

COVERS (4-COLOR)

	1X		2X		4X	
COVER 2	$ 3,500.00	$ 2,975.00	$ 3,250.00	$ 2,762.50	$ 3,000.00	$ 2,550.00
COVER 3	$ 3,000.00	$ 2,550.00	$ 2,750.00	$ 2,337.50	$ 2,500.00	$ 2,125.00
COVER 4	$ 4,200.00	$ 3,570.00	$ 4,000.00	$ 3,400.00	$ 3,800.00	$ 3,230.00

Net rate reflects 15% commission to recognized agencies or advertisers providing camera-ready materials. Cash with order or net 30 from invoice date. All orders must be paid in full by material due date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

Advertising Due Dates:

Issue Date	Space Closing	Materials Due
Summer 2008 (Jun, Jul, Aug-2008)	Feb. 15, 2008	Feb. 29, 2008
Fall 2008 (Sep, Oct, Nov-2008)	May 16, 2008	May 30, 2008
Winter 2008-9 (Dec-2008, Jan, Feb-2009)	Aug. 15, 2008	Aug. 29, 2008
Spring 2009 (Mar, Apr, May-2009)	Nov. 14, 2008	Nov. 28, 2008

TEXAS HIGHWAYS MAGAZINE

Advertising Rates

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	$7120	$6764	$6550	$6337	$6123	$5910
2/3 Page	$5880	$5586	$5410	$5233	$5057	$4880
1/2 Page	$4626	$4395	$4256	$4117	$3978	$3840
1/3 Page	$3326	$3160	$3060	$2960	$2860	$2761
1/6 Page	$1830	$1739	$1684	$1629	$1574	$1519
Cover 2	$9100	$8645	$8372	$8099	$7826	$7553
Cover 3	$8700	$8265	$8004	$7743	$7482	$7221

Notes: All rates are 4-color. Run-of-book spreads are 2 times Page Rate with frequency discounts applied to the cumulative total of pages scheduled. Rates for inside cover spreads, inserts, gatefolds, multi-title/frequency advertising, and other special advertising will be quoted on request. Preferred position, add 10% to all rates.

Special Section Guides including Holiday Gift Guide: $1750 per insertion

Commission: 15% to recognized agencies providing camera-ready materials.
Payment: Cash with order or net 30 from invoice date.
Space Deadline: 27th of the third month preceding issue date.
Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

Web Site Advertising

Home page sponsorship: $3,000/mo. Advertisers with 6x Full Page commitment in a 12 month period will receive 3 months of home page sponsorship free on a first come, first served basis.

Section page sponsorship: $1,500/mo

Products/Services advertising: $600/year

TRD-200706051

Joanne Wright
Deputy General Counsel
Texas Department of Transportation

Filed: December 3, 2007

♦ ♦ ♦

Public Notice of FEIS (Grand Parkway Segment E)

In the December 7, 2007, issue of the *Texas Register* (32 TexReg 9172), the Texas Department of Transportation, Environmental Affairs Division, published a Public Notice of FEIS (Grand Parkway Segment E). The deadline date for submittal of January 7, 2008 has been changed and extended. The following notice is re-published with the new deadline.

Pursuant to Title 43, Texas Administrative Code, §2.5(e)(8)(B), the Texas Department of Transportation (department) is advising the public of the availability of the Final Environmental Impact Statement (FEIS) for the proposed construction of State Highway 99, IH 10 to US 290 (the Grand Parkway Segment E) northwest of Houston in Harris County, Texas. Comments regarding the FEIS should be submitted to The Grand Parkway Association, Attention: Segment E Comments, located at 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or the Director of Project Development at the Texas Department of Transportation's Houston District Office located at 7600 Washington Avenue, Houston, Texas prior to 5:00 p.m. on **January 14, 2008.** The Texas Department of Transportation's mailing address is P.O. Box 1386, Houston, Texas, 77251-1386.

The purpose of the proposed action is to provide improved access to the existing and future thoroughfare system, reduce area traffic congestion, improve safety, and improve area-wide mobility. A full range of alternatives were identified and evaluated for Segment E at the corridor level (five corridors), transportation mode level (No Build, Transportation System Management Alternatives (TSM), Travel Demand Alternatives (TDM), and Modal Alternatives), and at the alignment level. The proposed action consists of the construction of a controlled access tollway from Franz Rd. to US 290 in Harris County, a distance ranging from 13.8 to 14.4 miles, depending on the alternative alignment considered. The proposed facility will consist of a four-mainlane controlled access tollway within a 400-foot (ROW) width. A total of three build alternative alignments, in addition to the No-Build alternative, have been presented in the FEIS. All three alternative alignments lie between Franz Rd. and US 290 in a north-south direction. Alternative Alignment A begins at Franz Road and traverses mainly through the center of the study area. This alignment alternative terminates at US 290, approximately 1.8 miles northwest of Mason Road and is 13.84 miles in length. Alternative Alignment B starts at the same location as Alternative Alignment A but traverses mainly through the eastern portion of the study area. Alternative Alignment B terminates at the same location of Alternative Alignment A, but is 13.95 miles in length. Alternative Alignment C starts at the same location as Alternative Alignment A and B, but traverses mainly through the western portion of the study area. Alternative Alignment C terminates at US 290, approximately 1.1 miles southeast of Becker Road and is 14.41 miles in length.

The preferred corridor and transportation mode and the recommended alternative alignment as presented in the DEIS, were selected after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments. After consideration of all agency and public comments received on the DEIS as well as updated environmental data, the GPA, in coordination with the department and FHWA, selected a Preferred Alternative Alignment. It was

determined after careful review of the DEIS comments that the Recommended Alternative Alignment as presented in the DEIS be carried forward as the Preferred Alternative Alignment. The preferred build alternative that has emerged from the study was proposed on the basis of its ability to best facilitate the projects Need and Purpose while minimizing impacts to the natural, physical, and social environments. The Preferred Build Alternative Alignment begins and terminates at the same location as Alternatives A, B, and C, and is 13.95 miles in length. The preferred alternative alignment for Segment E would require the acquisition of new ROW (693.1 acres), the adjustment of utility lines, and the filling of aquatic resources including jurisdictional wetlands (42.86 acres). No business or residential displacements would occur, and no historic sites or endangered species are expected to be affected. One archeological site at Cypress Creek has been determined as eligible for the National Register of Historic Places. The extent of impacts to the site cannot be determined until detailed construction plans for the Cypress Creek crossing are more fully developed. At that time, the department will propose a scope of work to mitigate the site appropriate to the proposed impacts.

Copies of the FEIS and other information about the project may be obtained from the Texas Department of Transportation's Houston District Office at the previously mentioned address. For further information, please contact David Gornet at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241. Copies of the FEIS may also be reviewed at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas; at the Houston Public Library in the Texas Room, 500 McKinney, Houston, Texas; at the Harris County Public Library, Katy Branch, 5414 Franz Road, Katy, Texas; at the Harris County Public Library, Kathryn Tyra Branch, 16719 Clay Road, Houston, Texas; and the Harris County Public Library, Northwest Branch, 11355 Regency Green Drive, Cypress, Texas.

TRD-200706052
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 3, 2007

♦ ♦ ♦

Texas Water Development Board

Request for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of a contract to re-calibrate the groundwater availability model for the Edwards-Trinity (Plateau) and Pecos Valley aquifers using parameter estimation (PEST) techniques with a high-performance computing (HPC) cluster to determine the feasibility of the groundwater availability modeling program using this approach. The total amount for the project shall not to exceed $110,000. Once a contract is negotiated, we anticipate that the project will take no more than a year to eighteen months to complete. Guidelines for Statements of Qualifications, which include an application form and more detailed research topic information, will be supplied by the TWDB upon request.

Description of Research Objectives

Since 1999, the Texas Legislature has approved funding for the Groundwater Availability Modeling Program. The purpose of the Groundwater Availability Modeling Program is to provide reliable and timely information on groundwater availability to the citizens of Texas to ensure adequate supplies or recognize inadequate supplies over a 50-year planning period. Numerical groundwater flow models of the aquifers in Texas will be used to make this assessment of groundwater availability. However, once a groundwater availability model is completed, it is important to be able to revisit the models to incorporate new information or understanding of the aquifers.

In support of the Groundwater Availability Modeling Program, the TWDB is requesting Statements of Qualifications on re-calibrating the groundwater availability model for the Edwards-Trinity (Plateau) and Pecos Valley aquifers using parameter estimation (PEST) techniques with a high-performance computing (HPC) cluster to determine the feasibility of the groundwater availability modeling program using this approach for model calibration. This proposed groundwater availability modeling project shall (1) include stakeholder involvement; (2) use valid, defensible, and documented data and standard scientific modeling procedures; and (3) follow all TWDB groundwater availability modeling protocol and standards, as applicable.

Details on the modeling projects and project requirements are available from the TWDB. The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material (http://www.twdb.state.tx.us/assistance/financial/fin_research/research.htm).

The objective of this project is to address the following:

* update the existing groundwater availability model of the Edwards-Trinity (Plateau) and Pecos Valley aquifers (Version 1.01) to better serve the needs of the stakeholders. The area around Upton and Reagan counties would benefit greatly by additional model parameter adjustments to better simulate historical water levels. At minimum, two stakeholder advisory forums shall be scheduled; one at the beginning of the project and one at the end;

* examine the feasibility of parameter estimation techniques as a means to automate and expedite the calibration process for the TWDB groundwater availability modeling program; and

* provide the groundwater availability modeling program with the high-performance computing cluster equipment needed for parallel processing to be used on other models under development, models slated for re-calibration, and/or as a means to expedite model simulations.

The following issues need to be addressed in each Statement of Qualifications:

* experience with hydrogeology, knowledge of Edwards-Trinity (Plateau) and Pecos Valley aquifers, and experience with Groundwater Vistas and parameter estimation (PEST);

* detailed specifications of the high performance computing cluster and supporting materials;

* approach for communication between the contractor and the stakeholder advisory forum, regional water planning groups, other groundwater conservation districts located within the study area, and TWDB staff; and

* total budget and an itemized budget broken by tasks and personnel.

Final project deliverables shall include:

* ten (10) hard copies of a summary report outlining the recalibration approach and methodologies used; any updates to the existing model parameters, including appropriate maps and supporting tables; model calibration statistics as outlined in Section 3.3 of the RFQ_GAM_2007.pdf (http://www.twdb.state.tx.us/gam/GAM_documents/documents.htm); sensitivity analysis, as discussed in Section 3.4 of the RFQ_GAM_2007.pdf document; limitations of the re-calibrated model; feasibility of using this approach on other existing groundwater availability models; and any other appropriate section as discussed in

the RFQ_GAM_2007.pdf document. The report should adhere to the formatting guidelines for Texas Water Development Board Reports as detailed in Attachment 3 of the RFQ_GAM_2007.pdf document. In addition, the report shall be delivered in an electronic format, as both a Word document and as an Adobe Acrobat pdf;

* all updated and documented MODFLOW files and Groundwater Vistas files. Nomenclature for the files will use eddt_p_v2.01 in the file structure denoting Version 2.01 of the Edwards-Trinity (Plateau) and Pecos Valley aquifers groundwater availability model; and

* all components of the high-performance computing (HPC) cluster including all associated equipment, cables, diagrams, warranties, and receipts.

In addition, we expect potential contractors to indicate their abilities in:

* general hydrogeology,

* hydrogeology of the modeled aquifer,

* Groundwater Vistas and parameter estimation (PEST) software,

* technology transfer,

* producing high-quality reports, and

* meeting deadlines.

At a minimum, TWDB staff expects to meet with the project team at the beginning of the project, after construction of the computer cluster, and at least once during the re-calibration phase of the project. A formal talk discussing the results shall be presented to TWDB staff at the end of the project.

The Statements of Qualifications shall not be more than nine pages in length (using Times Roman 12 font), excluding qualifications and experience of project staff. Applicants should be familiar with standards and requirements for the TWDB groundwater availability models.

Description of Funding Consideration

Up to $110,000 has been identified for water research assistance from the TWDB's Research and Planning Fund for the research for this project. Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially authorized for water research. Oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information

Ten double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 5:00 PM, January 17, 2007. Statements of Qualifications must be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Mr. David Carter at the preceding address or by calling (512) 936-6079. All technical questions should be directed to Ms. Cindy Ridgeway at (512) 936-2386.

TRD-200706112
Robert Flores
Attorney
Texas Water Development Board
Filed: December 5, 2007

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).